



# IOWA ADMINISTRATIVE BULLETIN

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Pages 397 to 480

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## PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

**PLEASE NOTE:** Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Acting Administrative Code Editor

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### CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

## Schedule for Rule Making 2010

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
<b>*Dec. 23 '09*</b>	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sep. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sep. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	<b>***May 26***</b>	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	<b>***June 23***</b>	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sep. 1	Nov. 29
<b>***May 26***</b>	June 16	July 6	July 21	July 23	Aug. 11	Sep. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sep. 29	Dec. 27
<b>***June 23***</b>	July 14	Aug. 3	Aug. 18	Aug. 20	Sep. 8	Oct. 13	Jan. 10 '11
July 9	July 28	Aug. 17	Sep. 1	<b>***Sep. 1***</b>	Sep. 22	Oct. 27	Jan. 24 '11
July 23	Aug. 11	Aug. 31	Sep. 15	Sep. 17	Oct. 6	Nov. 10	Feb. 7 '11
Aug. 6	Aug. 25	Sep. 14	Sep. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '11
Aug. 20	Sep. 8	Sep. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 7 '11
<b>***Sep. 1***</b>	Sep. 22	Oct. 12	Oct. 27	<b>***Oct. 27***</b>	Nov. 17	Dec. 22	Mar. 21 '11
Sep. 17	Oct. 6	Oct. 26	Nov. 10	<b>***Nov. 10***</b>	Dec. 1	Jan. 5 '11	Apr. 4 '11
Oct. 1	Oct. 20	Nov. 9	Nov. 24	<b>***Nov. 24***</b>	Dec. 15	Jan. 19 '11	Apr. 18 '11
Oct. 15	Nov. 3	Nov. 23	Dec. 8	<b>***Dec. 8***</b>	Dec. 29	Feb. 2 '11	May 2 '11
<b>***Oct. 27***</b>	Nov. 17	Dec. 7	Dec. 22	<b>***Dec. 22***</b>	Jan. 12 '11	Feb. 16 '11	May 16 '11
<b>***Nov. 10***</b>	Dec. 1	Dec. 21	Jan. 5 '11	Jan. 7 '11	Jan. 26 '11	Mar. 2 '11	May 30 '11
<b>***Nov. 24***</b>	Dec. 15	Jan. 4 '11	Jan. 19 '11	Jan. 21 '11	Feb. 9 '11	Mar. 16 '11	June 13 '11
<b>***Dec. 8***</b>	Dec. 29	Jan. 18 '11	Feb. 2 '11	Feb. 4 '11	Feb. 23 '11	Mar. 30 '11	June 27 '11
<b>***Dec. 22***</b>	Jan. 12 '11	Feb. 1 '11	Feb. 16 '11	Feb. 18 '11	Mar. 9 '11	Apr. 13 '11	July 11 '11

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
<b>8</b>	<b>Friday, October 1, 2010</b>	<b>October 20, 2010</b>
<b>9</b>	<b>Friday, October 15, 2010</b>	<b>November 3, 2010</b>
<b>10</b>	<b>Wednesday, October 27, 2010</b>	<b>November 17, 2010</b>

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

**\*\*\*Note change of filing deadline\*\*\***

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, October 12, 2010, at 9:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

**ACCOUNTANCY EXAMINING BOARD[193A]**

Professional Licensing and Regulation Bureau[193]  
 COMMERCE DEPARTMENT[181]“umbrella”

Initial and renewal fees for firm permits to practice, 12.1 Filed **ARC 9040B** ..... 9/8/10

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Reportable infectious and contagious animal diseases; fee schedule, 64.1, 64.30, 64.52, 64.55(1), 64.64, 64.71, 64.81, 64.101, 64.134 Filed Emergency After Notice **ARC 9102B** ..... 9/22/10

**CITY DEVELOPMENT BOARD[263]**

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]“umbrella”

Annexation requests; boundary adjustments; elections, 7.2(2), 7.8, 7.12, 10.1 Notice **ARC 9106B**..... 9/22/10

**CORRECTIONS DEPARTMENT[201]**

Electronic mail; appeals; medical care; parole board notification, 20.4, 44.1(2)“c,” 45.1(6), 45.4(2), 47.3(4), 47.4(10) Filed **ARC 9097B** ..... 9/22/10

**CULTURAL AFFAIRS DEPARTMENT[221]**

Iowa cultural trust grant program eligibility, 13.5(1) Filed Emergency **ARC 9081B** ..... 9/22/10

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

Deletion of HOME housing fund requirements, amendments to chs 21, 25 Notice **ARC 9060B** ..... 9/8/10  
 Trade mission, 72.2, 72.3 Filed **ARC 9064B** ..... 9/8/10  
 Iowans helping Iowans business assistance program, 78.8 to 78.18  
     Notice **ARC 9066B**, also Filed Emergency **ARC 9067B** ..... 9/8/10  
 Iowa small business loan program, ch 80 Filed Emergency After Notice **ARC 9062B** ..... 9/8/10  
 Targeted industries internship program—definition of “student,” 104.1 to 104.13 Filed **ARC 9063B** ..... 9/8/10  
 Iowa innovation council, ch 114 Filed **ARC 9061B** ..... 9/8/10

**EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]“umbrella”

One-year teacher exchange license, 13.17(1) Filed **ARC 9072B** ..... 9/8/10  
 Elementary counselor endorsement, 13.28(26) Filed **ARC 9070B** ..... 9/8/10  
 Secondary counselor endorsement, 13.28(27) Filed **ARC 9071B** ..... 9/8/10  
 Supervisor of special education (instructional)—content requirements, 15.5(2) Filed **ARC 9073B** ..... 9/8/10  
 Director of special education (AEA)—professional service, 18.11(2) Filed **ARC 9075B** ..... 9/8/10  
 Professional service administrator requirements for special education support programs, 27.3(5) Filed **ARC 9074B** ..... 9/8/10  
 Director of special education (AEA)—professional service, 27.3(6) Filed **ARC 9076B** ..... 9/8/10

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Authorization permit for discharge of biological and chemical pesticides to waters of the United States, 60.3, 64.3, 64.4(2)“a”(5), 64.6, 64.8(2), 64.15(7), 64.16(6), 66.1 Notice **ARC 9056B** ..... 9/8/10

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

Permitted and prohibited campaign activities by certain organizations, amendments to ch 4  
     Notice of Termination **ARC 9042B** ..... 9/8/10  
 Filing of reconciled bank statement, 4.21 Notice **ARC 9041B** ..... 9/8/10

**HUMAN SERVICES DEPARTMENT[441]**

Return of document submitted during eligibility determination, 41.27, 75.57 Filed **ARC 9043B** ..... 9/8/10  
 Reviews of disability; disability redeterminations for members attaining age 18, 75.20(4), 75.20(6) Filed **ARC 9044B** ..... 9/8/10  
 Medicaid—consumer choice option, 78.34(13), 78.37(16), 78.38(9), 78.41(15), 78.43(15), 78.46(6) Filed **ARC 9045B** ..... 9/8/10  
 Final settlement for state-owned teaching hospital, 79.1(5)“z,” 79.1(16)“w,” 81.6(4)“a”(4) Filed Emergency **ARC 9046B** ..... 9/8/10  
 HAWK-I—grace period for premium owed, 86.2, 86.3, 86.5, 86.7, 86.8, 86.20  
     Filed Emergency After Notice **ARC 9083B** ..... 9/22/10  
 HAWK-I—change of health or dental plan, 86.6 Filed Emergency After Notice **ARC 9084B** ..... 9/22/10  
 Iowa juvenile home; state training school, chs 101, 103 Notice **ARC 9086B** ..... 9/22/10

Family development and self-sufficiency program, rescind ch 165  
Filed Emergency After Notice **ARC 9047B** ..... 9/8/10

### **INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

Annual audited financial reports, 5.25 Notice **ARC 9079B** ..... 9/22/10  
 Regulatory asset adequacy issues summary, 5.34(7)"c"(1) Notice **ARC 9069B** ..... 9/8/10  
 Mortality adjustment factors (X factors) in deficiency reserve calculation, 47.4(2)"c"  
Notice **ARC 9059B** ..... 9/8/10  
 Mortality tables, 94.3 Notice **ARC 9065B** ..... 9/8/10  
 Limited purpose subsidiary life insurance companies, ch 99 Notice **ARC 9080B** ..... 9/22/10  
 Standards and commissioner's authority for companies deemed to be in hazardous financial  
 condition, ch 110 Notice **ARC 9105B** ..... 9/22/10

### **IOWA FINANCE AUTHORITY[265]**

Iowans helping Iowans housing assistance program, ch 40  
Notice **ARC 9078B**, also Filed Emergency **ARC 9077B** ..... 9/8/10

### **IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

Covered wages; refunds; benefits, 4.8, 6.5(3), 9.3, 11.5, 13.2(9), 14.5, 14.16, 16.2 Filed **ARC 9068B** ..... 9/8/10

### **LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

OSHA standards for cranes and derricks—adoption by reference, 26.1 Notice **ARC 9090B** ..... 9/22/10  
 Clarification of board procedures and actions, amendments to chs 80 to 85, 90 Filed **ARC 9082B** ..... 9/22/10  
 Conversion of power boilers; code and code cases adopted by reference; control safety data  
 reports, 90.15, 91.1, 91.20(1)"d" Notice **ARC 9087B** ..... 9/22/10

### **MEDICINE BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Confidential records, 2.13 Notice **ARC 9089B** ..... 9/22/10  
 Standards of practice—medical directors at medical spas; discipline, 13.8, 23.1 Filed **ARC 9088B** ..... 9/22/10

### **NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Procedures for sale of nursery stock, 71.2(2)"c" Filed **ARC 9051B** ..... 9/8/10  
 Fishing regulations, 81.2 Filed **ARC 9052B** ..... 9/8/10  
 Fishing tournaments, 88.1 Filed **ARC 9053B** ..... 9/8/10  
 Waterfowl and coot hunting seasons, 91.1, 91.3, 91.6 Filed Emergency After Notice **ARC 9055B** ..... 9/8/10  
 Priority watersheds, 113.2, 113.5 Filed **ARC 9054B** ..... 9/8/10

### **PHARMACY BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Temporary designation of controlled substances, 10.38(1) Filed Emergency **ARC 9091B** ..... 9/22/10

### **PUBLIC HEALTH DEPARTMENT[641]**

Outpatient diabetes education programs, amendments to ch 9 Notice **ARC 9092B** ..... 9/22/10  
 Plumbing and mechanical systems board—contested cases, ch 33 Filed **ARC 9057B** ..... 9/8/10  
 Iowa needs nurses now infrastructure account, ch 111 Notice **ARC 9096B** ..... 9/22/10  
 Governmental public health advisory bodies, ch 186 Notice **ARC 9093B** ..... 9/22/10

### **PUBLIC SAFETY DEPARTMENT[661]**

Weapons permits, ch 91 Notice **ARC 9085B** ..... 9/22/10  
 Liquefied petroleum gas—reference updates, stationary service, 226.1, 226.4, 226.5, 226.7,  
 226.8 Notice **ARC 9098B** ..... 9/22/10  
 Electrician and electrical contractor licensing, 500.2, 502.1 to 502.3 Notice **ARC 9099B** ..... 9/22/10

### **REVENUE DEPARTMENT[701]**

Individual income, corporation and franchise tax, amendments to chs 10, 38, 40, 43, 44, 53,  
 59 Filed **ARC 9103B** ..... 9/22/10  
 Tax credits—individual income, corporation and franchise tax, amendments to chs 38, 42,  
 51, 52, 57, 58 Filed **ARC 9104B** ..... 9/22/10

**SECRETARY OF STATE[721]**

Form of primary and general election ballots, 21.202(2), 21.203(2)

Notice **ARC 9050B**, also Filed Emergency **ARC 9049B** ..... 9/8/10**TRANSPORTATION DEPARTMENT[761]**

Update of motor vehicle rules, amendments to chs 400, 401, 405, 415, 425, 431, 450, 480

Filed **ARC 9048B** ..... 9/8/10**TREASURER OF STATE[781]**LIFT small business loan program—eligibility, 4.6(3) Notice **ARC 9039B** ..... 9/8/10Accepting credit card payments, ch 8 Filed **ARC 9100B** ..... 9/22/10**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]“umbrella”

Disconnection of residence with a deployed service member, 19.4, 20.4 Filed **ARC 9101B** ..... 9/22/10**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

**EDITOR’S NOTE: Terms ending April 30, 2011.**

Senator Merlin Bartz  
2081 410th Street  
Grafton, Iowa 50440

Representative Marcella R. Frevert  
P.O. Box 324  
Emmetsburg, Iowa 50536

Senator Thomas Courtney  
2200 Summer Street  
Burlington, Iowa 52601

Representative David Heaton  
510 East Washington  
Mt. Pleasant, Iowa 52641

Senator Wally Horn  
101 Stoney Point Road, SW  
Cedar Rapids, Iowa 52404

Representative Tyler Olson  
P.O. Box 2389  
Cedar Rapids, Iowa 52406

Senator John P. Kibbie  
P.O. Box 190  
Emmetsburg, Iowa 50536

Representative Nathan Reichert  
1155 Iowa Avenue  
Muscatine, Iowa 52761h

Senator James Seymour  
901 White Street  
Woodbine, Iowa 51579

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**CITY DEVELOPMENT BOARD[263]**

Annexation requests; boundary adjustments; elections, 7.2(2), 7.8, 7.12, 10.1 IAB 9/22/10 <b>ARC 9106B</b>	Iowa Tourism Room, First Floor 200 E. Grand Ave. Des Moines, Iowa	October 12, 2010 2 to 3 p.m.
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**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

Deletion of HOME housing fund requirements, amendments to chs 21, 25 IAB 9/8/10 <b>ARC 9060B</b>	Northwest First Floor Conference Room 200 E. Grand Ave. Des Moines, Iowa	September 28, 2010 3 to 4 p.m.
Iowans helping Iowans business assistance program, 78.8 to 78.18 IAB 9/8/10 <b>ARC 9066B</b> (See also <b>ARC 9067B</b> )	Iowa Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	September 28, 2010 10 to 11 a.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Authorization permit for discharge of biological and chemical pesticides to waters of the United States, 60.3, 64.3, 64.4, 64.6, 64.8(2), 64.15(7), 64.16(6), 66.1 IAB 9/8/10 <b>ARC 9056B</b>	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa (Parking available in municipal lot south of building)	September 28, 2010 6 p.m.
	City Hall Community Room 15 N. Sixth St. Clear Lake, Iowa	September 29, 2010 1 p.m.
	Public Library 609 Cayuga St. Storm Lake, Iowa	September 30, 2010 11 a.m.
	Public Library 304 N. Franklin St. Manchester, Iowa	October 5, 2010 11 a.m.
	Public Library 115 W. Washington St. Washington, Iowa (Attendees requested to park around the city park across from the library)	October 6, 2010 11 a.m.
	Auditorium, Wallace State Office Bldg. 502 E. Ninth St. Des Moines, Iowa	October 7, 2010 6 p.m.

**INSURANCE DIVISION[191]**

Regulatory asset adequacy issues summary, 5.34(7)"c"(1) IAB 9/8/10 <b>ARC 9069B</b>	Lobby Conference Room 330 Maple St. Des Moines, Iowa	September 28, 2010 10 a.m.
Mortality adjustment factors (X factors) in deficiency reserve calculation, 47.4(2)"c" IAB 9/8/10 <b>ARC 9059B</b>	Lobby Conference Room 330 Maple St. Des Moines, Iowa	September 28, 2010 10 a.m.
Mortality tables, 94.3 IAB 9/8/10 <b>ARC 9065B</b>	Lobby Conference Room 330 Maple St. Des Moines, Iowa	September 28, 2010 10 a.m.
Limited purpose subsidiary life insurance companies, ch 99 IAB 9/22/10 <b>ARC 9080B</b>	Lobby Conference Room 330 Maple St. Des Moines, Iowa	October 12, 2010 10 a.m.

**INSURANCE DIVISION[191](cont'd)**

Standards and commissioner's authority for companies deemed to be in hazardous financial condition, ch 110 IAB 9/22/10 <b>ARC 9105B</b>	Lobby Conference Room 330 Maple St. Des Moines, Iowa	October 12, 2010 10 a.m.
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**LABOR SERVICES DIVISION[875]**

OSHA standards for cranes and derricks—adoption by reference, 26.1 IAB 9/22/10 <b>ARC 9090B</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	October 13, 2010 9 a.m. (If requested)
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Boilers and pressure vessels, 90.15, 91.1, 91.20(1)“d” IAB 9/22/10 <b>ARC 9087B</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	October 13, 2010 10 a.m. (If requested)
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**MEDICINE BOARD[653]**

Confidential records, 2.13 IAB 9/22/10 <b>ARC 9089B</b>	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	October 12, 2010 11 a.m.
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**PUBLIC HEALTH DEPARTMENT[641]**

Outpatient diabetes education programs, amendments to ch 9 IAB 9/22/10 <b>ARC 9092B</b>	Room 518 Lucas State Office Bldg. Des Moines, Iowa	October 12, 2010 10:30 a.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

Weapons permits, ch 91 IAB 9/22/10 <b>ARC 9085B</b>	First Floor Conference Room Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 13, 2010 10 a.m.
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Liquefied petroleum gas—reference updates, stationary service, 226.1, 226.4, 226.5, 226.7, 226.8 IAB 9/22/10 <b>ARC 9098B</b>	First Floor Conference Room Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 13, 2010 9:30 a.m.
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Electrician and electrical contractor licensing, 500.2, 502.1, 502.2, 502.3 IAB 9/22/10 <b>ARC 9099B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 21, 2010 10 a.m.
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**TREASURER OF STATE[781]**

LIFT small business loan program—eligibility, 4.6(3) IAB 9/8/10 <b>ARC 9039B</b>	Room 114 State Capitol Building Des Moines, Iowa	September 30, 2010 2 p.m.
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The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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## ARC 9106B

## CITY DEVELOPMENT BOARD[263]

## Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 368.10, the City Development Board gives Notice of Intended Action to adopt amendments to Chapter 7, “Voluntary Annexation,” and Chapter 10, “Board Proceedings on Petitions for Involuntary Boundary Change After Committee Approval,” Iowa Administrative Code.

The current rules outline notification requirements for a city’s request for Board approval of a voluntary annexation application; describe Board proceedings on voluntary annexation requests; outline the calculation of land area included without the consent of the owner; describe Board proceedings on involuntary boundary adjustment requests; and outline the election procedure if a petition for an involuntary boundary change is approved by the City Development Board Committee.

The proposed amendments intend to clarify how public land and railway right-of-way are treated in annexation requests; create procedures for boundary adjustments between cities by petition and consent pursuant to 2010 Iowa Acts, House File 2376; and conform the rules to recent legislative changes in 2010 Iowa Acts, House File 2376.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on Tuesday, October 12, 2010. Interested persons may submit written comments to Marie Steenlage, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3064; or E-mail [marie.steenlage@iowa.gov](mailto:marie.steenlage@iowa.gov).

A public hearing will be held Tuesday, October 12, 2010, from 2 to 3 p.m. in the Iowa Tourism Room, First Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

These amendments are intended to implement Iowa Code chapter 368 as amended by 2010 Iowa Acts, House File 2376.

The following amendments are proposed.

ITEM 1. Amend paragraph **7.2(2)“g”** as follows:

*g.* Certification that the city has complied with the notice requirements of Iowa Code section 368.7(3), including proof of mailing of the application and affidavit of publication of the required public notice, and, if railway right-of-way is included or public land is included without the written consent of the agency with jurisdiction over the public land, certification of notice to the owner as required by Iowa Code section 368.7(1). For purposes of calculating the required period of notice, “business days” shall include Monday through Friday of each week, excluding “legal holidays” as set forth in Iowa Code section 4.1(34).

ITEM 2. Amend subrule 7.8(1) as follows:

**7.8(1) General rule.** Territory comprising railway right-of-way or territory comprising not more than 20 percent of the total land area of a voluntary annexation may be included without the consent of the ~~owner(s)~~ owner to avoid creating an island or to create more uniform boundaries.

ITEM 3. Amend subrule 7.8(2) as follows:

**7.8(2) Calculation of proportion of land area included without the consent of the owner(s).**

*a.* Only contiguous land area may be considered for purposes of calculating the amount of the land area which may be included without the owner’s consent.

*b.* ~~Territory owned by the state and territory within road right-of-way owned by the county, included pursuant to Iowa Code section 368.5, and railway right-of-way included in a voluntary~~

## CITY DEVELOPMENT BOARD[263](cont'd)

~~annexation proposal pursuant to Iowa Code section 368.7(1) shall be included in the calculation of the total annexation area for purposes of calculating the amount of land area which may be included without the owner's consent. The area of the territory that is public land included without the written consent of the agency with jurisdiction over the public land shall not be used to determine the percentage of territory that is included with the consent of the owner and without the consent of the owner.~~

ITEM 4. Adopt the following new rule 263—7.12(368):

**263—7.12(368) Board proceedings on boundary adjustments between cities by petition and consent.**

**7.12(1) General rule.** A request for board approval to sever real property from one city and to annex the same real property to another city shall be initiated pursuant to 2010 Iowa Acts, House File 2376. Contiguous property may be combined within the same request.

**7.12(2) Contents of petition.** The petition under this rule shall be in substantially the same form as an application under Iowa Code section 368.7 and rule 263—7.2(368). Additionally, if the city council of either city conditioned approval of the petition upon an agreement entered into by the cities providing for the transition of property taxes or the sharing of property tax revenues from the property described in the petition, the agreement shall be filed with the board at the same time the approved petition is filed.

**7.12(3) Initial board review.** The board shall review each petition to sever real property from one city and to annex the same real property to another city in order to determine compliance with the requirements of Iowa Code section 368.7 and these rules. The board shall notify both cities and the real property owner(s) of the board's initial review of the severance and annexation petition. If the petition does not meet the requirements of Iowa Code section 368.7, the board may request additional information before making a final decision or may dismiss the petition. If the application is found to be in proper form, the board shall hold a public hearing on the severance, annexation, and any agreement between the cities.

**7.12(4) Public hearing.** The board shall give notice of the public hearing in the same manner as notice of a public meeting under Iowa Code section 368.11, subsection 5. The board shall conduct a public hearing pursuant to the procedure set forth in paragraph 7.8(3) "b" for hearings on voluntary applications.

**7.12(5) Decision criteria.** The board shall consider whether the request serves the public interest and may consider the criteria for approval of involuntary city development actions as set forth in Iowa Code sections 368.16 and 368.17. The board may approve or deny only the severance and annexation of the real property described in the petition. The board may approve the petition only if the board also approves any agreement entered into by the cities pursuant to 2010 Iowa Acts, House File 2376. The board shall not approve the petition if the severance and annexation creates an island.

**7.12(6) Denial.** If a petition is denied, the board shall issue an explanation for the denial. A copy of the explanation shall be provided to the clerk of each city involved in the severance and annexation and to any other party of record in the board's proceeding.

**7.12(7) Approval.** If a petition is approved, the board's order approving the severance and annexation is not subject to approval at an election. The board shall file and provide a copy of the order to the clerk of each city involved in the severance and annexation, the recorder of each county that contains a portion of any city or territory affected by the severance and annexation, and any other party of record in the board's proceeding. Upon expiration of the time for appeal, the board shall file with the Iowa secretary of state and record with the recorder of each county that contains a portion of any city or territory involved copies of the proceedings, including the petition, any agreement between the cities, the board's order approving the petition, proof of service and publication of required notices, and any other material deemed by the board to be of primary importance to the proceeding. The board shall file a map and legal description with the Iowa department of transportation.

## CITY DEVELOPMENT BOARD[263](cont'd)

ITEM 5. Rescind rule 263—10.1(368) and adopt the following **new** rule in lieu thereof:

**263—10.1(368) Election.** If a petition or plan is approved, the board shall submit the proposal at an election held on a date specified in Iowa Code section 39.2, subsection 4, paragraph “a” or “b,” whichever is applicable, and the county commissioner of elections shall conduct the election. The board shall proceed with establishing a date for an election on the proposal regardless of appeal or applications filed pursuant to rule 263—9.13(368). Appeal of a committee decision does not stay the election. After the county commissioner of elections has certified the results to the board, the board shall serve and publish notice of the results as provided in Iowa Code section 362.3.

This rule is intended to implement Iowa Code section 368.19.

**ARC 9086B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 218.4, the Department of Human Services proposes to rescind Chapter 101, “Iowa State Juvenile Home,” and adopt new Chapter 101, “Iowa Juvenile Home,” and to rescind Chapter 103, “Eldora Training School,” and adopt new Chapter 103, “State Training School,” Iowa Administrative Code.

These amendments update the rules for the Iowa Juvenile Home at Toledo and the State Training School at Eldora and Toledo. The amendments reorganize, update, and clarify existing rules on admission procedures, communication with individuals residing in those facilities, employment of those individuals, alleged child abuse in the facility, approval of temporary home visits, tours of the facility and public use of buildings and grounds. Specific changes include:

- Adding more definitions of terms;
- Expanding the list of persons who shall be denied visiting rights;
- Requiring supervision by an adult family member during a visit by a family member under the age of 18 (formerly age 12);
- Conforming Chapter 103 to the requirements of 2009 Iowa Code Supplement chapter 692A regarding sex offender registration to reflect the implementation of 2009 Iowa Acts, chapter 119.

Additional rules are proposed for both the Iowa Juvenile Home and the State Training School to address:

- Population guidelines and criteria for accepting youth into care;
- Photographing and recording of individuals;
- Recovery of the cost of care from individuals with unearned income; and
- Procedures for donations to the facility.

Rules on program assignment at the Iowa Juvenile Home and on charges for use of facility buildings and grounds have been deleted, as have rules for the State Training School regarding the following topics:

- Detention;
- Standards;
- Advisory committee;
- Risk assessment for sex offenders; and
- Public notification regarding sex offenders.

These amendments provide for grievance procedures but not for waivers. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Any interested person may make written comments on the proposed amendments on or before October 12, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 8.7 and chapters 218, 233A and 233B and 2009 Iowa Code Supplement section 692A.109.

The following amendments are proposed.

ITEM 1. Rescind 441—Chapter 101 and adopt the following new chapter in lieu thereof:

CHAPTER 101  
IOWA JUVENILE HOME

**441—101.1(218) Definitions.**

*“Assigned service worker”* means the individual’s social work case manager who is a department employee.

*“Child”* means a person under the age of 18 years.

*“Contraband”* means weapons, ammunition, tobacco, alcohol, drugs, money, altered authorized property, mood-altering plant material, obscene material as defined in Iowa Code section 728.1(5), explosives, material that can be used in the manufacture of explosives, or material advocating disruption of or injury to residents, employees, programs, or physical facilities. “Contraband” includes anything which is illegal to possess under federal or state law and materials that are used in the production of drugs or alcohol or used in conjunction with the taking of illicit drugs. “Contraband” also includes anything determined to be banned from individual possession by published facility rules.

*“Department”* means the Iowa department of human services.

*“Division administrator”* means the administrator of the division of mental health and disability services within the department.

*“Facility”* means the Iowa juvenile home.

*“Family”* means spouse, child, parent, sibling, or grandparent.

*“Gift or bequest”* means anything of value that a facility receives that is intended for use directly by the employees of the facility. Items intended for public distribution, such as clothes or furniture, do not constitute a gift to the facility.

*“Grievance”* means a written or oral complaint by or on behalf of an individual that involves:

1. A rights violation or unfairness to the individual, or
2. Any aspect of the individual’s life with which the individual does not agree.

*“Individual,”* as used in this chapter, means any child who is committed to the director of the department of human services and is admitted to and receives services from the Iowa juvenile home. The terms “student,” “resident,” “juvenile,” and “youth” are synonymous with the term “individual.”

*“Legal representative”* means a person, including an attorney, who is authorized by law to act on behalf of an individual.

*“Money”* means all forms of currency, checks, money orders, stocks, bonds, and any other item that can be used as a medium of exchange for payment for goods or services.

*“Parent”* means a natural or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

*“Rights”* means the human, civil, and constitutional liberties an individual possesses through federal and state constitutions and laws.

*“Tobacco”* means all forms of tobacco.

*“Weapon”* means any gun, knife, tool, object, or chemical that can be used to inflict harm on one’s self or another.

This rule is intended to implement Iowa Code section 218.4.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**441—101.2(218) Standards.**

**101.2(1)** The juvenile home shall comply with:

*a.* Standards required for comprehensive residential facilities for children in 441—Chapter 115 except that requirements contained in 441—subrule 115.4(1) for staff ratios during prime programming time are waived when there is inadequate funding.

*b.* Standards related to mandatory reporting of child abuse found in rule 441—112.10(232).

**101.2(2)** The juvenile home shall comply with the standards for group living foster care facilities in 441—Chapter 114 except that:

*a.* Rules 441—114.6(237) on organization and administration and 441—114.9(237) on intake procedures do not apply.

*b.* Only sleeping rooms built after January 1, 1988, must meet the requirements in 441—paragraph 114.3(2)“*b.*”

*c.* Staff job descriptions shall be identified by the department of administrative services’ human resources enterprise.

This rule is intended to implement Iowa Code section 218.4.

**441—101.3(218) Admission.**

**101.3(1)** *Population guidelines.* The facility population level shall be based on the population guidelines that the judicial branch, in consultation with the department, develops on the number of individuals who may be placed at a juvenile facility at any one time. Pursuant to those guidelines and the responsibility of the superintendent for admission of individuals, the superintendent and the chief juvenile court officers shall allocate to each judicial district the number of children from each district who may be placed in the facility for diagnosis and evaluation and for treatment.

**101.3(2)** *Acceptance of child.* A certified copy of the court order which complies with Iowa Code chapter 232 shall accompany the child to the facility, along with the relevant petitions.

*a.* A child shall be accepted for evaluation as specified in the court order only when a diagnostic bed is available.

*b.* A child shall be accepted into the regular program as specified in the court order only when a treatment bed is available.

*c.* A child adjudicated to have committed a delinquent act shall not be admitted to the juvenile home.

*d.* The superintendent or chief juvenile court officer shall notify the court when the appropriate space, service, or program is not available so that admission can be ordered when the facility can meet the child’s needs.

**101.3(3)** *Time of admission.* When a child is to be admitted to the juvenile home, arrangements shall be made for the actual admission to occur between 8 a.m. and 4:30 p.m., Monday through Friday, whenever possible.

This rule is intended to implement Iowa Code section 218.4.

**441—101.4(218) Plan of care.**

**101.4(1)** *Individual care plan conference.* At least ten working days before the individual care plan conference, the facility shall provide written notification of the time, date and nature of the conference to:

*a.* The individual;

*b.* The individual’s parents;

*c.* The individual’s legal representative;

*d.* The assigned service worker; and

*e.* The court.

**101.4(2)** *Special meeting.* Whenever special concerns and needs arise regarding an individual, the superintendent or designee shall schedule a meeting to evaluate and formulate appropriate changes in the individual care plan. Notice of the meeting shall be issued to:

*a.* The individual;

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- b. The individual's parents;
- c. The individual's legal representative;
- d. The assigned service worker; and
- e. Other relevant parties.

**101.4(3) Prerelease conference.** A conference shall be held 30 days before any anticipated release of an individual from the regular program. At least 5 working days before the conference, the facility shall provide written notice of the time, date, and purpose of the conference to:

- a. The individual;
- b. The individual's parents;
- c. The individual's legal representative;
- d. The assigned service worker; and
- e. The court.

This rule is intended to implement Iowa Code section 218.4.

**441—101.5(218) Communication with individuals.**

**101.5(1) Incoming telephone calls.** Approval of the superintendent or designee is required for all incoming telephone calls for an individual before the conversation occurs. An authorized employee shall verify the identity of the caller before approval is given. Approved telephone calls shall not be monitored.

**101.5(2) Mail and packages.**

a. Outgoing or incoming letters and packages shall not be opened, read, censored, or tampered with in any manner except that, to search for and seize contraband, an employee may:

- (1) Open, but not read, incoming and outgoing letters and packages in the presence of the individual to whom the letters and packages belong; or
- (2) Require that the individual open the letters and packages in an employee's presence and disclose the contents.

b. Letters or packages found to contain contraband shall be confiscated. Both the sender and the intended receiver of the confiscated letters and packages shall be notified and given reasons for the action in writing within 48 hours of the action.

c. The superintendent or designee may terminate correspondence between an individual and another person when the individual's treatment team has determined that the correspondence is not in the individual's best interest and is detrimental to the individual's treatment plan. Termination shall be based on the circumstances of each case.

- (1) The superintendent or designee shall provide justification to terminate the correspondence in a written notice to the correspondents.
- (2) Correspondents may file a grievance concerning the termination.

**101.5(3) Visits.**

a. *Schedule.* Visiting hours shall be from 10 a.m. to 4:30 p.m. on Saturday and Sunday. Visits by the individual's family or legal representative shall be encouraged. Necessary flexibility in these hours and days will be allowed.

- (1) The superintendent may designate certain weekdays or holidays for visiting. The resident shall be responsible for informing visitors about designated visiting days.
- (2) Visiting during times other than those described in this subrule shall require approval of the superintendent before the day of the visit.

b. *Applicability.* Other than a family member or legal representative, a person who wants to visit an individual shall obtain prior approval from the superintendent or designee before visiting. Visitation rights shall be denied to:

- (1) A former juvenile home resident unless the former resident is a family member or has prior approval of the superintendent or designee;
- (2) A parent whose parental rights have been terminated or limited by court order;
- (3) A person who is restricted by court order from contact with the individual;
- (4) A visitor who refuses to cooperate with the rules of the facility;

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- (5) A visitor who creates a disturbance or is hostile to the point of being disruptive;
- (6) A visitor who passes or attempts to pass contraband to an individual or who aids in an escape or attempted escape;
- (7) A visitor who is under the influence of or has been partaking of drugs or alcoholic beverages; and
- (8) Any other person who, based on reasonable cause, is believed to pose a risk to the individual's treatment or to the safety or security of the facility.

*c. Procedures.*

(1) Visitors shall check in with security upon arrival. The employee on duty may request identification of the visitor. Failure to produce identification may result in denial of the visit.

(2) An individual shall be permitted to visit with up to six family members during any one visit. Family members under 18 years of age shall visit only with adult family supervision.

(3) An individual shall not be permitted to visit with the family of another individual unless the superintendent or designee has given prior approval. An individual shall have written authorization of the superintendent or designee before accompanying parents of another individual off grounds on a visit.

*d. Limits.* The superintendent reserves the right to limit or terminate visiting in all cases when doing so is in the best interests of the individual's personal and therapeutic needs. When limitation or termination of visiting rights occurs, the superintendent or designee shall:

- (1) Immediately notify persons involved why the action was taken; and
- (2) Place a written report in the individual's file.

**101.5(4) Attorney contacts.** An individual's attorney shall have the right to visit or have telephone contact with the individual at any reasonable time.

*a.* An individual shall have the right to contact the individual's attorney during normal business hours and at other times with prior approval of the attorney. Responsibility for payment for the cost of the contact shall be determined before the contact is made.

*b.* An individual who does not have an attorney shall be referred to the committing court for an attorney to be appointed.

**101.5(5) Interviews and statements.**

*a. Request.* Requests to interview an individual made by media (newspapers, television stations, radio stations, etc.), groups, or persons not related to the individual shall be made through the superintendent's office.

(1) The superintendent or designee shall inform the individual of the request and of the individual's right to agree to participate in the interview or to remain silent and not participate.

(2) If an interview may have an impact on the individual's legal status, the superintendent or designee shall contact the individual's attorney to determine if the attorney has any objection to the individual's participation.

*b. Decision.* When the individual agrees to participate, the interview shall be granted at the discretion of the superintendent. The superintendent may deny an interview in situations deemed detrimental to the individual. The person requesting the interview may appeal the superintendent's decision to the division administrator.

*c. Procedure.*

(1) Whenever an interview is granted, at least one facility employee shall be present for the entirety of the interview and shall have the authority to terminate the interview anytime the employee believes the best interests of the individual are not being served. Exceptions to this requirement shall be made when the individual's interview is with the individual's own attorney or with state officials acting in an official capacity.

(2) The individual shall be represented by legal counsel during any interview that is conducted to obtain information that will be or may be used in court.

*d. Depositions.* The superintendent may grant permission for written depositions according to the procedures for granting interviews. Voice recording of depositions shall not be permitted. One copy of

## HUMAN SERVICES DEPARTMENT[441](cont'd)

the deposition shall be submitted to the superintendent. This rule shall in no way restrict depositions ordered by the court.

This rule is intended to implement Iowa Code section 218.4.

**441—101.6(218) Photographing and recording of individuals.** An individual's parent or legal representative may take photographs or make audio or video recordings of that individual but shall not be authorized to take photographs or make recordings of any other individual.

**101.6(1)** With the authorization of the superintendent or designee, an individual may take a photograph of another individual with that individual's consent.

**101.6(2)** Use of still or video cameras or voice recorders to photograph or record an individual by anyone other than the individual, parent, legal representative or authorized employee shall be allowed only with the prior authorization of the superintendent or designee.

*a.* When granted, authorization to photograph or record shall be for one specific use and shall not extend to any other use.

*b.* Photographs and video or voice recordings of an individual for public distribution shall be permitted only with a signed informed consent from the superintendent and the individual's parent or legal representative.

**101.6(3)** A person authorized to take photographs or recordings shall make every effort to preserve the inherent dignity of the individual and to preclude exploitation or embarrassment of the individual or the family of the individual.

This rule is intended to implement Iowa Code section 218.4.

**441—101.7(218) Employment of individual.** Employers that want to hire an individual must obtain approval from the superintendent or designee.

**101.7(1)** To clarify the employer-individual employment agreement, the superintendent or designee shall communicate to the individual's employer and document:

*a.* The employer's legal responsibilities, including:

(1) Adherence to child labor laws; and

(2) Payment in accordance with the Fair Labor Standards Act. Work of a more skilled nature shall be compensated accordingly.

*b.* The employer's responsibility to meet the requirements of the juvenile home, including but not limited to those relating to salary, supervision, transportation, and work hours of the individual. The employer shall:

(1) Make all payments for the individual's employment to the facility business office for deposit in the individual's account. Payment of any nature shall not be given directly to the individual for any purpose.

(2) Immediately report a runaway individual to the superintendent or designee.

(3) Report to the superintendent or designee an individual's behavior that is unacceptable to the employer.

**101.7(2)** An individual's behavior that is unacceptable to an employer shall not subject the individual to any sanctions, punishment or punitive restriction of privileges unless the behavior constitutes a public offense or violates facility rules. In such case, the individual may be referred to court for prosecution or the facility's discipline procedure may be followed.

**101.7(3)** The employer, the superintendent or designee, or the individual shall have the right to terminate the employment at any time.

This rule is intended to implement Iowa Code section 218.4.

**441—101.8(218) Temporary home visits.**

**101.8(1)** An individual may be granted a temporary home visit for up to five days for reasons such as:

*a.* To attend funerals, weddings, or holiday functions;

*b.* For job seeking;

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- c. For the primary purpose of exploring and improving family and community relations; or
- d. For a preplacement visit to a foster or group home to test the appropriateness of such a placement.

**101.8(2)** The superintendent or designee and the assigned service worker shall approve a temporary home visit before the visit is scheduled and only after the assigned service worker has investigated and approved in writing the temporary home visit placement.

**101.8(3)** Five working days in advance of a visit, the superintendent or designee shall notify the following in writing:

- a. The individual's parents;
- b. The individual's legal representative;
- c. The temporary placement, if different from the parents' home;
- d. The assigned service worker; and
- e. The court.

**101.8(4)** In cases of an emergency, the notice required by subrule 101.8(3) may be delivered by telephone and shall be followed by a written notice explaining the special circumstance.

**101.8(5)** In a special case, based on the individual's treatment needs, the superintendent or designee may extend a temporary home visit when both the superintendent or designee and the assigned service worker's supervisor agree that the proposed extension is appropriate.

This rule is intended to implement Iowa Code section 218.4.

**441—101.9(218) Grievances.** Any individual who believes the individual's rights have been violated by the juvenile home or who has a complaint concerning the individual's treatment at the juvenile home may file a grievance. The individual's parent, family, or legal representative may file a grievance on behalf of the individual by submitting the grievance in writing to the superintendent.

This rule is intended to implement Iowa Code section 218.4.

**441—101.10(218) Alleged child abuse.** The department shall arrange for the investigation of any reported case of alleged child abuse. For cases in which the alleged perpetrator is a facility employee, contractor, or volunteer, or some other department employee, the investigation shall be conducted by an agency other than the department of human services.

This rule is intended to implement Iowa Code section 218.4.

**441—101.11(233B) Cost of care.** The juvenile home shall seek to recover a portion of the cost of care from an individual who has unearned income. In determining the amount to be recovered:

1. The individual shall be allowed to retain a personal allowance equal to the personal allowance amount established by the Social Security Administration for the Supplemental Security Income program.
2. The amount recovered shall not exceed the actual cost of care.
3. The cost of care shall be determined using the average per diem multiplied by the total days of care.
4. The superintendent may grant a one-time exception to recovery of up to \$1,000 for a personal needs living expense if an individual is being discharged and has no viable means of support upon release.

This rule is intended to implement Iowa Code section 233B.16.

**441—101.12(218) Buildings and grounds.**

**101.12(1) Tours.** Tours of the facility shall be subject to the prior approval of the superintendent or designee. Tours may be scheduled on weekdays from 8 a.m. to 4 p.m. by appointment through the superintendent's office. Approval shall be based on availability of employee time to conduct the tour and the programmatic and security needs of the facility.

**101.12(2) Public use.** Facility space shall be for the primary use of the juvenile home. All public use of facility space shall require prior approval of the superintendent or designee. Approval for use shall

## HUMAN SERVICES DEPARTMENT[441](cont'd)

be based on the order of requests received and on space availability after the programmatic and security needs of the facility are met.

This rule is intended to implement Iowa Code section 218.4.

**441—101.13(8,218) Gifts and bequests.** Gifts or bequests of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the superintendent.

**101.13(1)** The superintendent or designee shall evaluate the gift or bequest in terms of the nature of the contribution to the facility program.

**101.13(2)** The superintendent shall be responsible for accepting the gift or bequest and reporting it to the division administrator.

*a.* All monetary gifts or bequests shall be acknowledged in writing to the donor.

*b.* All gifts or bequests, regardless of value, shall be reported to the Iowa ethics and campaign disclosure board within 20 days of receipt of the gift or bequest using the board's Form-GB.

This rule is intended to implement Iowa Code section 8.7.

ITEM 2. Rescind 441—Chapter 103 and adopt the following new chapter in lieu thereof:

CHAPTER 103  
STATE TRAINING SCHOOL

**441—103.1(218) Definitions.**

*“Child”* means a person under the age of 18 years.

*“Contraband”* means weapons, ammunition, tobacco, alcohol, drugs, money, altered authorized property, mood-altering plant material, obscene material as defined in Iowa Code section 728.1(5), explosives, material that can be used in the manufacture of explosives, or material advocating disruption of or injury to residents, employees, programs, or physical facilities. “Contraband” includes anything which is illegal to possess under federal or state law and materials that are used in the production of drugs or alcohol or used in conjunction with the taking of illicit drugs. “Contraband” also includes anything determined to be banned from individual possession by published facility rules.

*“Department”* means the Iowa department of human services.

*“Division administrator”* means the administrator of the division of mental health and disability services within the department.

*“Facility”* means the state training school.

*“Family”* means spouse, child, parent, sibling, or grandparent.

*“Gift or bequest”* means anything of value that a facility receives that is intended for use directly by the employees of the facility. Items intended for public distribution, such as clothes or furniture, do not constitute a gift to the facility.

*“Grievance”* means a written or oral complaint by or on behalf of an individual that involves:

1. A rights violation or unfairness to the individual, or
2. Any aspect of the individual's life with which the individual does not agree.

*“Individual,”* as used in this chapter, means any child who is committed to the director of the department of human services and is admitted to and receives services from the state training school. The terms “student,” “resident,” “juvenile,” and “youth” are synonymous with the term “individual.” For purposes of the state training school, the term shall also include a person whose stay is extended beyond the age of 18 under the provisions of 2009 Iowa Code Supplement sections 232.53(2) and 232.53(4).

*“Iowa sex offender registry”* means a central registry of sex offenders established under 2009 Iowa Code Supplement chapter 692A that is maintained by the department of public safety.

*“Juvenile court officer”* means the same as defined in Iowa Code section 232.2(30).

*“Juvenile offender”* means a juvenile who is required to be registered with the Iowa sex offender registry and with the sheriff of the juvenile's county of residence.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

“*Legal representative*” means a person, including an attorney, who is authorized by law to act on behalf of an individual.

“*Money*” means all forms of currency, checks, money orders, stocks, bonds, and any other item that can be used as a medium of exchange for payment for goods or services.

“*Parent*” means a natural or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

“*Registration*” means the submission of registration forms to the Iowa sex offender registry and to the sheriff of the person’s county of residence.

“*Rights*” means the human, civil, and constitutional liberties an individual possesses through federal and state constitutions and laws.

“*State training school*” means the units for juvenile delinquents at the Eldora and Toledo facilities as defined in Iowa Code section 233A.1(2).

“*Tobacco*” means all forms of tobacco.

“*Weapon*” means any gun, knife, tool, object, or chemical that can be used to inflict harm on one’s self or another.

This rule is intended to implement Iowa Code section 218.4.

#### **441—103.2(218) Admission.**

**103.2(1) *Population guidelines.*** The facility population level shall be based on the population guidelines that the judicial branch, in consultation with the department, develops on the number of individuals who may be placed at a juvenile facility at any one time. Pursuant to those guidelines and the responsibility of the superintendents for admission of individuals, the superintendents and the chief juvenile court officers shall allocate to each judicial district the number of children from each district who may be placed in the facility for diagnosis and evaluation and for treatment.

**103.2(2) *Acceptance of child.*** A certified copy of the court order which complies with Iowa Code chapter 232 shall accompany the child to the facility, along with the relevant petitions.

*a.* A child shall be accepted for evaluation as specified in the court order only when a diagnostic bed is available.

*b.* A child shall be accepted into the regular program as specified in the court order only when a treatment bed is available.

*c.* A child adjudicated as a child in need of assistance shall not be admitted to the state training school, except:

(1) For diagnosis and evaluation and then only when a current petition is on file that alleges the child to have committed a delinquent act, or

(2) When the child is also adjudicated delinquent and meets admission criteria for the state training school as a delinquent.

*d.* The superintendent or chief juvenile court officer shall notify the court when the appropriate space, service, or program is not available so that admission can be ordered when the facility can meet the child’s needs.

**103.2(3) *Time of admission.*** When a child is to be admitted to the state training school, arrangements shall be made for the actual admission to occur between 8 a.m. and 4:30 p.m., Monday through Friday, whenever possible.

This rule is intended to implement Iowa Code section 218.4.

#### **441—103.3(218) Plan of care.**

**103.3(1) *Individual care plan conference.*** At least ten working days before the individual care plan conference, the facility shall provide written notification of the time, date and nature of the conference to:

- a.* The individual;
- b.* The individual’s parents;
- c.* The individual’s legal representative;
- d.* The individual’s juvenile court officer; and

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*e.* The court.

**103.3(2) *Special meeting.*** Whenever special concerns and needs arise regarding an individual, the superintendent or designee shall schedule a meeting to evaluate and formulate appropriate changes in the individual care plan. Notice of the meeting shall be issued to:

- a.* The individual;
- b.* The individual's parents;
- c.* The individual's legal representative;
- d.* The individual's juvenile court officer; and
- e.* Other relevant parties.

**103.3(3) *Prerelease conference.*** A conference shall be held 30 days before any anticipated release of an individual from the regular program. At least 5 working days before the conference, the facility shall provide written notice of the time, date, and purpose of the conference to:

- a.* The individual;
- b.* The individual's parents;
- c.* The individual's legal representative;
- d.* The individual's juvenile court officer; and
- e.* The court.

This rule is intended to implement Iowa Code section 218.4.

**441—103.4(218) Communication with individuals.**

**103.4(1) *Incoming telephone calls.*** Approval of the superintendent or designee is required for all incoming telephone calls for an individual before the conversation occurs. An authorized employee shall verify the identity of the caller before approval is given. Approved telephone calls shall not be monitored.

**103.4(2) *Mail and packages.***

*a.* Outgoing or incoming letters and packages shall not be opened, read, censored, or tampered with in any manner except that, to search for and seize contraband, an employee may:

- (1) Open, but not read, incoming and outgoing letters and packages in the presence of the individual to whom the letters and packages belong; or
- (2) Require that the individual open the letters and packages in an employee's presence and disclose the contents.

*b.* Letters or packages found to contain contraband shall be confiscated. Both the sender and the intended receiver of the confiscated letters and packages shall be notified and given reasons for the action in writing within 48 hours of the action.

*c.* The superintendent or designee may terminate correspondence between an individual and another person when the individual's treatment team has determined that the correspondence is not in the individual's best interest and is detrimental to the individual's treatment plan. Termination shall be based on the circumstances of each case.

- (1) The superintendent or designee shall provide justification to terminate the correspondence in a written notice to the correspondents.
- (2) Correspondents may file a grievance concerning the termination.

**103.4(3) *Visits.***

*a.* *Schedule.* Visiting hours shall be from 10 a.m. to 4:30 p.m. on Saturday and Sunday. Visits by the individual's family or legal representative shall be encouraged. Necessary flexibility in these hours and days will be allowed.

(1) The superintendent may designate certain weekdays or holidays for visiting. The resident shall be responsible for informing visitors about designated visiting days.

(2) Visiting during times other than those described in this subrule shall require approval of the superintendent before the day of the visit.

*b.* *Applicability.* Other than a family member or legal representative, a person who wants to visit an individual shall obtain prior approval from the individual's juvenile court officer and the superintendent or designee before visiting. Visitation rights shall be denied to:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- (1) A former training school resident unless the former resident is a family member or has prior approval of the superintendent or designee;
  - (2) A parent whose parental rights have been terminated or limited by court order;
  - (3) A person who is restricted by court order from contact with the individual;
  - (4) A visitor who refuses to cooperate with the rules of the facility;
  - (5) A visitor who creates a disturbance or is hostile to the point of being disruptive;
  - (6) A visitor who passes or attempts to pass contraband to an individual or who aids in an escape or attempted escape;
  - (7) A visitor who is under the influence of or has been partaking of drugs or alcoholic beverages;
- and
- (8) Any other person who, based on reasonable cause, is believed to pose a risk to the individual's treatment or to the safety or security of the facility.

*c. Procedures.*

- (1) Visitors shall check in with security upon arrival. The employee on duty may request identification of the visitor. Failure to produce identification may result in denial of the visit.
- (2) An individual shall be permitted to visit with up to six family members during any one visit. Family members under 18 years of age shall visit only with adult family supervision.
- (3) An individual shall not be permitted to visit with the family of another individual unless the individual's juvenile court officer and the superintendent or designee have given prior approval. An individual shall have written authorization of the individual's juvenile court officer and the superintendent or designee before accompanying parents of another individual off grounds on a visit.

*d. Limits.* The superintendent reserves the right to limit or terminate visiting in all cases when doing so is in the best interests of the individual's personal and therapeutic needs. When limitation or termination of visiting rights occurs, the superintendent or designee shall:

- (1) Immediately notify persons involved why the action was taken; and
- (2) Place a written report in the individual's file.

**103.4(4) Attorney contacts.** An individual's attorney shall have the right to visit or have telephone contact with the individual at any reasonable time.

*a.* An individual shall have the right to contact the individual's attorney during normal business hours and at other times with prior approval of the attorney. Responsibility for payment for the cost of the contact shall be determined before the contact is made.

*b.* An individual who does not have an attorney shall be referred to the committing court for an attorney to be appointed.

**103.4(5) Interviews and statements.**

*a. Request.* Requests to interview an individual made by media (newspapers, television stations, radio stations, etc.), groups, or persons not related to the individual shall be made through the superintendent's office.

- (1) The superintendent or designee shall inform the individual of the request and of the individual's right to agree to participate in the interview or to remain silent and not participate.

- (2) If an interview may have an impact on the individual's legal status, the superintendent or designee shall contact the individual's attorney to determine if the attorney has any objection to the individual's participation.

*b. Decision.* When the individual agrees to participate, the interview shall be granted at the discretion of the superintendent. The superintendent may deny an interview in situations deemed detrimental to the individual. The person requesting the interview may appeal the superintendent's decision to the division administrator.

*c. Procedure.*

- (1) Whenever an interview is granted, at least one facility employee shall be present for the entirety of the interview and shall have the authority to terminate the interview anytime the employee believes the best interests of the individual are not being served. Exceptions to this requirement shall be made when the individual's interview is with the individual's own attorney or with state officials acting in an official capacity.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) The individual shall be represented by legal counsel during any interview that is conducted to obtain information that will be or may be used in court.

*d. Depositions.* The superintendent may grant permission for written depositions according to the procedures for granting interviews. Voice recording of depositions shall not be permitted. One copy of the deposition shall be submitted to the superintendent. This rule shall in no way restrict depositions ordered by the court.

This rule is intended to implement Iowa Code section 218.4.

**441—103.5(218) Photographing and recording of individuals.** An individual's parent or legal representative may take photographs or make audio or video recordings of that individual but shall not be authorized to take photographs or make recordings of any other individual.

**103.5(1)** With the authorization of the superintendent or designee, an individual may take a photograph of another individual with that individual's consent.

**103.5(2)** Use of still or video cameras or voice recorders to photograph or record an individual by anyone other than the individual, parent, legal representative, or authorized employee shall be allowed only with the prior authorization of the superintendent or designee.

*a.* When granted, authorization to photograph or record shall be for one specific use and shall not extend to any other use.

*b.* Photographs and voice or video recordings of an individual for public distribution shall be permitted only with a signed informed consent from the superintendent and the individual's parent or legal representative.

**103.5(3)** A person authorized to take photographs or recordings shall make every effort to preserve the inherent dignity of the individual and to preclude exploitation or embarrassment of the individual or the family of the individual.

This rule is intended to implement Iowa Code section 218.4.

**441—103.6(218) Employment of individual.** Employers that want to hire an individual must obtain approval from the superintendent or designee.

**103.6(1)** To clarify the employer-individual employment agreement, the superintendent or designee shall communicate to the individual's employer and document:

*a.* The employer's legal responsibilities, including:

(1) Adherence to child labor laws; and

(2) Payment in accordance with the Fair Labor Standards Act. Work of a more skilled nature shall be compensated accordingly.

*b.* The employer's responsibility to meet the requirements of the training school, including but not limited to those relating to salary, supervision, transportation, and work hours of the individual. The employer shall:

(1) Make all payments for the individual's employment to the facility business office for deposit in the individual's account. Payment of any nature shall not be given directly to the individual for any purpose.

(2) Immediately report a runaway individual to the superintendent or designee.

(3) Report to the superintendent or designee an individual's behavior that is unacceptable to the employer.

**103.6(2)** An individual's behavior that is unacceptable to an employer shall not subject the individual to any sanctions, punishment or punitive restriction of privileges unless the behavior constitutes a public offense or violates facility rules. In such case, the individual may be referred to court for prosecution or the facility's discipline procedure may be followed.

**103.6(3)** The employer, the superintendent or designee, or the individual shall have the right to terminate the employment at any time.

This rule is intended to implement Iowa Code section 218.4.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**441—103.7(218) Temporary home visits.**

**103.7(1)** An individual may be granted a temporary home visit for up to five days for reasons such as:

- a. To attend funerals, weddings, or holiday functions;
- b. For job seeking;
- c. For the primary purpose of exploring and improving family and community relations; or
- d. For a preplacement visit to a foster or group home to test the appropriateness of such a placement.

**103.7(2)** The superintendent or designee and the individual's juvenile court officer shall approve a temporary home visit in advance of any visit being scheduled and only after the juvenile court officer has investigated and approved in writing the temporary home visit placement.

**103.7(3)** Five working days in advance of a visit, the superintendent or designee shall notify the following in writing:

- a. The individual's parents;
- b. The individual's legal representative;
- c. The temporary placement, if different from the parents' home;
- d. The individual's juvenile court officer; and
- e. The court.

**103.7(4)** In cases of an emergency, the notice required by subrule 103.7(3) may be delivered by telephone and shall be followed by a written notice explaining the special circumstance.

**103.7(5)** In a special case, based on the individual's treatment needs, the superintendent or designee may extend a temporary home visit when both the superintendent or designee and the individual's juvenile court officer agree that the proposed extension is appropriate.

This rule is intended to implement Iowa Code section 218.4.

**441—103.8(218) Grievances.** Any individual who believes the individual's rights have been violated by the state training school or who has a complaint concerning the individual's treatment at the state training school may file a grievance. The individual's parent, family, or legal representative may file a grievance on behalf of the individual by submitting the grievance in writing to the superintendent.

This rule is intended to implement Iowa Code section 218.4.

**441—103.9(692A) Sex offender registration.** An individual who has been determined to be a sex offender as defined in 2009 Iowa Code Supplement section 692A.101 must register as a sex offender before release from the state training school unless the juvenile court finds that the individual is exempted from this requirement.

**103.9(1) Notification.** When an individual who is a juvenile offender has not previously registered, the superintendent or designee shall provide the individual with Form DCI-144, Notification of Registration Requirement, as required by the department of public safety in 661—subrule 83.3(1). Failure to provide a juvenile offender with the notification form does not relieve the juvenile offender of the duty to register with the Iowa sex offender registry.

**103.9(2) Exemption from registration.** To exempt a juvenile offender from registration, the language in the order of adjudication or disposition must clearly state that the juvenile offender is exempted from the registration requirement. If a court order is silent, the registration requirement applies.

a. If the order language does not clearly state that the juvenile offender is exempted from the registration process, then the responsibility rests with the juvenile offender to seek a clarifying order to be exempt from the registration process. A juvenile offender who seeks an exemption from the registration requirement has the obligation to prove that the juvenile offender deserves the exemption.

b. When the judicial decision is deferred, registration shall be assumed to be required until the court orders otherwise. If the court order defers the decision to grant an exemption from registration until the juvenile offender's treatment is completed, the language in the order should specify who tracks the case until the new court order is issued. If it is not clear who tracks the case, the juvenile offender is responsible to seek a clarifying order to be exempt from the registration process.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**103.9(3) Registration.** The superintendent or designee shall provide the juvenile offender with Form DCI-145, Sex Offender Registration, as required by the department of public safety in 661—subrule 83.3(2). Form DCI-145 must be submitted to the sheriff of each county in which the offender will be residing, employed, or attending classes as well as to the department of public safety to satisfy the registration requirements of the Iowa sex offender registry.

*a.* When the juvenile offender is released from the state training school, the superintendent or designee shall submit the registration form to the division of criminal investigation of the department of public safety unless, by the time of release, the juvenile court finds that the juvenile should not be required to register as allowed by 2009 Iowa Code Supplement chapter 692A.

*b.* Copies of the sex offender registration shall be maintained in the juvenile offender's file at the state training school.

This rule is intended to implement 2009 Iowa Code Supplement section 692A.109.

**441—103.10(218) Alleged child abuse.** The department shall arrange for the investigation of any reported case of alleged child abuse. For cases in which the alleged perpetrator is a facility employee, contractor, or volunteer, or some other department employee, the investigation shall be conducted by an agency other than the department of human services.

This rule is intended to implement Iowa Code section 218.4.

**441—103.11(233A) Cost of care.** The state training school shall seek to recover a portion of the cost of care from an individual who has unearned income. In determining the amount to be recovered:

1. The individual shall be allowed to retain a personal allowance equal to the personal allowance amount established by the Social Security Administration for the Supplemental Security Income program.

2. The amount recovered shall not exceed the actual cost of care.

3. The cost of care shall be determined using the average per diem multiplied by the total days of care.

4. The superintendent may grant a one-time exception to recovery of up to \$1,000 for a personal needs living expense if an individual is being discharged and has no viable means of support upon release.

This rule is intended to implement Iowa Code section 233A.17.

**441—103.12(218) Buildings and grounds.**

**103.12(1) Tours.** Tours of the facility shall be subject to the prior approval of the superintendent or designee. Tours may be scheduled on weekdays from 8 a.m. to 4 p.m. by appointment through the superintendent's office. Approval shall be based on availability of employee time to conduct the tour and the programmatic and security needs of the facility.

**103.12(2) Public use.** Facility space shall be for the primary use of the state training school. All public use of facility space shall require prior approval of the superintendent or designee. Approval for use shall be based on the order of requests received and on space availability after the programmatic and security needs of the facility are met.

This rule is intended to implement Iowa Code section 218.4.

**441—103.13(8,218) Gifts and bequests.** Gifts or bequests of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the superintendent.

**103.13(1)** The superintendent or designee shall evaluate the gift or bequest in terms of the nature of the contribution to the facility program.

**103.13(2)** The superintendent shall be responsible for accepting the gift or bequest and reporting it to the division administrator.

*a.* All monetary gifts or bequests shall be acknowledged in writing to the donor.

HUMAN SERVICES DEPARTMENT[441](cont'd)

*b.* All gifts or bequests, regardless of value, shall be reported to the Iowa ethics and campaign disclosure board within 20 days of receipt of the gift or bequest using the board's Form-GB. One copy of the completed form shall be sent to the division administrator.

This rule is intended to implement Iowa Code section 8.7.

## ARC 9079B

### INSURANCE DIVISION[191]

#### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 505.8, the Iowa Insurance Division hereby gives Notice of Intended Action to amend Chapter 5, “Regulation of Insurers—General Provisions,” Iowa Administrative Code.

This amendment rescinds rule 191—5.25(505), which, prior to January 1, 2010, improved the Iowa Insurance Division's surveillance of the financial conditions of insurers by requiring an annual audit of financial statements by certified public accountants, communication of internal control related matters noted in an audit, and management's report of internal control over financial reporting. However, effective on and after January 1, 2010, 191—Chapter 98, Annual Financial Reporting Requirements, replaced rule 191—5.25(505).

Any interested person may make written suggestions or comments on this proposed amendment on or before October 12, 2010. Written comments should be directed to Matt Hargrafen, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be sent electronically to [matthew.hargrafen@iid.iowa.gov](mailto:matthew.hargrafen@iid.iowa.gov) or by facsimile to (515)281-4096.

Chapter 5 does not provide for waivers.

This amendment is intended to implement Iowa Code section 505.8.

The following amendment is proposed.

Rescind and reserve rule **191—5.25(505)**.

## ARC 9080B

### INSURANCE DIVISION[191]

#### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 505.8, the Iowa Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 99, “Limited Purpose Subsidiary Life Insurance Companies,” Iowa Administrative Code.

Pursuant to 2010 Iowa Acts, Senate File 2201, section 9, the rules in Chapter 99 authorize the establishment of domestic limited purpose subsidiary life insurance companies that are wholly owned by domestic insurers authorized to transact the business of insurance pursuant to Iowa Code chapter

## INSURANCE DIVISION[191](cont'd)

508 and that may issue securities and otherwise access financial markets and alternative sources of capital through securitizations and other transactions.

This chapter does not provide for waivers.

Any interested person may make written comments on the proposed rules on or before October 12, 2010. Written comments may be sent to Matt Hargrafen, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to [matthew.hargrafen@iid.iowa.gov](mailto:matthew.hargrafen@iid.iowa.gov) or via facsimile to (515)281-3059.

A public hearing will be held on October 12, 2010, at 10 a.m. in the Lobby Conference Room of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine remarks to the subject of the proposed rules.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing and mobility impairments, should contact the Insurance Division and advise of specific needs.

These rules are intended to implement Iowa Code section 505.8 and 2010 Iowa Acts, Senate File 2201, section 9.

The following amendment is proposed.

Adopt the following **new** 191—Chapter 99:

CHAPTER 99  
LIMITED PURPOSE SUBSIDIARY LIFE INSURANCE COMPANIES

**191—99.1(505,508) Authority.** This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code section 505.8 and 2010 Iowa Acts, Senate File 2201, section 9.

**191—99.2(505,508) Purpose.** The purpose of this chapter is to authorize the establishment of domestic limited purpose subsidiary life insurance companies that are wholly owned by domestic insurers authorized to transact the business of insurance pursuant to Iowa Code chapter 508 and that may issue securities and otherwise access financial markets and alternative sources of capital through securitizations and other transactions.

**191—99.3(505,508) Definitions.** For purposes of this chapter, the following definitions shall apply:

*“Affiliated companies”* means domestic life insurance companies that are directly or indirectly wholly owned subsidiaries of the same parent.

*“Ceding insurer”* means a domestic life insurance company that is an affiliated company of an LPS and that cedes risk to the LPS pursuant to a reinsurance contract.

*“Commissioner”* means the Iowa insurance commissioner.

*“Guaranty of a parent”* means an agreement to pay specified obligations of the LPS by a parent of the LPS approved by the commissioner that is not a ceding insurer and the guarantor has sufficient equity, less the equity of all ceding insurers that are subsidiaries of the guarantor, to satisfy the agreement during the life of the guaranty.

*“Insurance securitization”* or *“securitization”* means a transaction or a group of related transactions, which may include capital market offerings, that are effected through related risk transfer instruments and facilitating administrative agreements where all or part of the result of such transactions is used to fund the LPS’s obligations under a reinsurance contract with a ceding insurer and by which proceeds are:

1. Obtained by an LPS, directly or indirectly, through the issuance of securities by the LPS or any other person; or
2. Provided through one or more letters of credit or other assets for the benefit of the LPS, which the commissioner authorizes the LPS to treat as admitted assets for purposes of the LPS’s annual statement; where all or any part of such proceeds, letters of credit, or assets, as applicable, is used to fund the LPS’s obligations under a reinsurance contract with a ceding insurer. The terms “insurance securitization” and

## INSURANCE DIVISION[191](cont'd)

“securitization” do not include the issuance of a letter of credit for the benefit of the commissioner to satisfy all or part of the LPS’s capital and surplus requirements under this chapter.

“*Insurer*,” for purposes of this chapter, means a domestic life insurance company organized under Iowa Code chapter 508.

“*Letters of credit*” means clean, unconditional, irrevocable letters of credit issued or confirmed by a qualified United States financial institution as defined in Iowa Code section 521B.4, subsection 2.

“*LPS*” means a limited purpose subsidiary life insurance company organized pursuant to 2010 Iowa Acts, Senate File 2201, section 9, that is wholly owned by the organizing life insurance company and that is issued a certificate of authority by the commissioner pursuant to this chapter.

“*LPS security*” means:

1. A security issued by an LPS; or
2. A security issued by a third party, the proceeds of which are obtained directly or indirectly by an LPS.

“*Management*” means the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the LPS, including but not limited to officers or other agents elected or appointed to act on behalf of the LPS.

“*Material*” means a transaction or series of transactions involving amounts equal to or exceeding 3 percent of the LPS’s admitted assets less any letters of credit and intangible assets included as an admitted asset of the LPS.

“*Organizational document*” means an LPS’s articles of incorporation and bylaws.

“*Organizing life insurance company*” means the domestic life insurance company that organizes the LPS pursuant to 2010 Iowa Acts, Senate File 2201, section 9.

“*Parent*” means a person as defined in Iowa Code section 521A.1 that directly or indirectly through one or more intermediaries wholly owns an LPS.

“*Reinsurance contract*” means a contract between an LPS and a ceding insurer pursuant to which the LPS agrees to provide reinsurance to the ceding insurer for risks.

“*Risk*” means risks associated with life insurance policies and contracts written by the ceding insurer or assumed by the ceding insurer from an affiliated company which were written by the affiliated company and for which the ceding insurer holds direct statutory reserves for those policies and contracts required by Iowa Code section 508.36.

“*Risk-based capital instructions*” means the instructions included in the risk-based capital report as adopted by the National Association of Insurance Commissioners, as such risk-based capital instructions may be amended by the National Association of Insurance Commissioners from time to time in accordance with the procedures adopted by the National Association of Insurance Commissioners.

“*Security*” means the same as defined in Iowa Code section 502.102 and shall also include any form of debt obligation, surplus note, derivative, or other financial instrument that the commissioner designates as a “security” for purposes of this chapter.

“*Subsidiary*” means the same as defined in Iowa Code section 521A.1(9).

“*Surplus note*” means an unsecured subordinated debt obligation possessing characteristics consistent with paragraph 3 of the National Association of Insurance Commissioners (NAIC) Statement of Statutory Accounting Principles No. 41, as amended from time to time and as modified or supplemented by rule or order of the commissioner.

#### **191—99.4(505,508) Formation of LPS.**

**99.4(1)** An LPS’s organizational documents shall limit the LPS’s authority to transact the business of reinsurance to reinsure only the risks of a ceding insurer and shall state that the LPS shall not otherwise engage in the business of insurance.

**99.4(2)** An LPS’s organizational documents shall provide that the LPS shall always be wholly owned by the organizing life insurance company and that the LPS’s stock shall be issued only to the organizing life insurance company.

## INSURANCE DIVISION[191](cont'd)

**191—99.5(505,508) Certificate of authority.**

**99.5(1) *Certificate of authority required.*** No LPS shall do any reinsurance business in this state unless it obtains from the commissioner a certificate of authority pursuant to this rule.

**99.5(2) *Application for certificate of authority.*** Before receiving a certificate of authority, an LPS shall do all of the following:

*a.* File with the commissioner a copy of its plan of operation.

*b.* File with the commissioner an affidavit of its president, a vice president, the treasurer, or the chief financial officer that includes all of the following statements, to the best of such person's knowledge and belief, after reasonable inquiry:

(1) The proposed organization and operation of the LPS comply with all applicable provisions of this chapter.

(2) The LPS's investment policy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and management of such assets with respect to the risks associated with the reinsurance contract.

(3) Any reinsurance contract and any arrangement for securing the LPS's obligations under such reinsurance contract, including but not limited to any agreements or other documentation to implement such arrangement, comply with the provisions of this chapter.

*c.* File with the commissioner an opinion of legal counsel, in a form acceptable to the commissioner, that the offer and sale of any LPS securities comply with all applicable registration requirements or applicable exemptions from or exceptions to such requirements of the federal securities laws and that the offer and sale of securities by the LPS itself comply with all registration requirements or applicable exemptions from or exceptions to such requirements of the securities laws of this state. Such opinions shall not be required as part of the application if the LPS includes a specific statement in its plan of operation that such opinions will be provided to the commissioner in advance of the offer or sale of any LPS securities.

*d.* File with the commissioner an opinion of a qualified independent actuary acceptable to the commissioner that the methodology and assumptions to set and discount reserves make good and sufficient provision for the risk assumed by the LPS, including significant stress tests on key assumptions.

*e.* Pay to the commissioner the reasonable expenses and costs incurred by the commissioner incident to examining the LPS's application pursuant to Iowa Code chapter 507.

*f.* Submit any other statements or documents required by the commissioner to evaluate the LPS's application for a certificate of authority.

**99.5(3) *Material change in application.*** In the event of any material change in any item required in subrule 99.5(2), the LPS shall notify the commissioner at least 30 days prior to the change and submit to the commissioner for approval any revised documents, opinions, or certifications.

**99.5(4) *Grant of certificate of authority.***

*a.* The commissioner may grant a certificate of authority to an LPS, which shall be valid through the next June 1 following the date of initial issuance and which may be renewed annually thereafter, authorizing the LPS to transact reinsurance business as an LPS in this state upon a finding that:

(1) The proposed plan of operation provides for a viable operation;

(2) The terms of any reinsurance contract and related transactions comply with this chapter and all applicable insurance laws and regulations; and

(3) The proposed plan of operation is not hazardous to any ceding insurer.

*b.* In conjunction with the issuance of a certificate of authority to an LPS, the commissioner may issue an order that includes any provisions, terms, and conditions regarding the organization, licensing, and operation of the LPS that the commissioner deems appropriate and that are not inconsistent with the provisions of this chapter.

**99.5(5) *Scope of certificate of authority.*** An LPS issued a certificate of authority may reinsure only the risks of a ceding insurer. An LPS shall not otherwise engage in the business of insurance. An LPS may purchase reinsurance to cede the risks assumed under a reinsurance contract, subject to the prior approval of the commissioner.

INSURANCE DIVISION[191](cont'd)

**191—99.6(505,508) Capital and surplus.**

**99.6(1)** An LPS shall not be issued a certificate of authority unless it possesses and thereafter maintains unimpaired paid-in capital and surplus of not less than \$2.5 million.

**99.6(2)** The commissioner may prescribe additional tangible capital and surplus based upon the type, volume, and nature of reinsurance business transacted.

**99.6(3)** Minimum capital and surplus required by subrule 99.6(1) shall be in the form of cash or other securities that are investment grade at the time of acquisition and acceptable to the commissioner.

**191—99.7(505,508) Plan of operation.**

**99.7(1)** An LPS shall have a plan of operation approved by its board of directors. The plan of operation shall include all of the following:

*a.* A complete description of all reinsurance transactions, reinsurance security arrangements, securitizations, and any other material transactions or arrangements.

*b.* The source and form of the LPS's capital and surplus.

*c.* The investment policy of the LPS.

*d.* Pro forma balance sheets and income statements illustrating one or more adverse case scenarios, as determined under criteria required by the commissioner, for the performance of the LPS under all reinsurance contracts.

*e.* Risk-based capital requirements, which, at a minimum, shall require the LPS to maintain risk-based capital equal to the product of two and one-half and the number determined under the life risk-based capital formula in accordance with the risk-based capital instructions.

*f.* Notice and reporting of material transactions.

*g.* Policies for payments of dividends and other distributions to the organizing life insurance company.

*h.* Copies of all contracts between the LPS and affiliated companies.

**99.7(2)** Any change in the LPS's plan of operation shall require prior approval of the commissioner.

**191—99.8(505,508) Dividends and distributions.** An LPS may pay dividends and distributions that do not decrease the capital of the LPS below the minimum capital and surplus amount designated by the commissioner pursuant to rule 191—99.6(505,508), provided, however, that no dividend or distribution may be declared or paid by an LPS if such dividend or distribution would jeopardize the ability of the LPS to fulfill the LPS's obligations. The LPS shall give the commissioner 30 days' prior notice of any dividend or distribution. The notice shall include the amount of the dividend or distribution and a certification signed by an officer of the LPS stating that the dividend or distribution would not jeopardize the ability of the LPS to fulfill the LPS's obligations.

**191—99.9(505,508) Reports and notifications.**

**99.9(1)** *Notice of securitizations.* An LPS shall provide the commissioner with a copy of a complete set of executed documentation of an insurance securitization no later than 45 days after the closing on the transactions for such securitization.

**99.9(2)** *Notice of material change to financial condition.* In the event of any material change in the financial condition or management of an LPS, the LPS shall notify the commissioner in writing within two business days of any such change.

**99.9(3)** *Reports on reserves.* An LPS shall file annually with the commissioner an actuarial opinion, in compliance with 191—5.34(508), on reserves for all risks assumed by the LPS pursuant to its reinsurance contracts provided by an internal actuary and may discount its reserves in accordance with that actuarial opinion, subject to approval by the commissioner. An LPS shall file biennially an opinion of a qualified independent actuary acceptable to the commissioner concerning the methods and assumptions used to set reserves.

**99.9(4)** *Risk-based capital reports.* An LPS shall file annually with the commissioner a report of the LPS's risk-based capital level as of the end of the calendar year immediately preceding containing the information required by the risk-based capital instructions.

## INSURANCE DIVISION[191](cont'd)

**99.9(5) *Foreclosure on collateral.*** An LPS shall notify the commissioner immediately of any action by a ceding insurer or any other person to foreclose on or otherwise take possession of collateral provided by the LPS to secure any obligation of the LPS.

**99.9(6) *Filing reports with the National Association of Insurance Commissioners.*** Notwithstanding 191—5.3(507,508,515), 191—5.26(508,515), or any other rule, an LPS shall not be required to file any report, notice, or other document with the National Association of Insurance Commissioners unless required by the commissioner.

**191—99.10(505,508) Material transactions.**

**99.10(1) *Notice of material transactions.*** An LPS shall not take any of the following actions unless the LPS provides the commissioner at least 30 days' prior written notice and the commissioner expressly approves the action:

- a. The dissolution of the LPS.
- b. Any sale, exchange, lease, mortgage, assignment, pledge or other transfer or granting of a security interest in over 30 percent of the assets of the LPS.
- c. Any incurrence of material indebtedness by the LPS.
- d. Any making of a material loan or other material extension of credit by the LPS.
- e. Any material payment out of capital and surplus other than dividends or distributions paid in accordance with rule 191—99.8(505,508).
- f. Any merger or consolidation to which the LPS is a constituent party.
- g. Any transfer to or redomestication in any jurisdiction by the LPS.
- h. The termination of all or any part of an LPS's business.

This subrule shall not apply when an LPS takes any action described in paragraph "b" or "e" in accordance with the LPS's plan of operation.

**99.10(2) *Prior approval of certain payments.*** An LPS shall submit for prior approval of the commissioner periodic written requests for authorization to make payments of interest on and repayments of principal of surplus notes and other debt obligations issued by the LPS, provided that the commissioner shall not approve such payment if the commissioner determines that such payment would jeopardize the ability of the LPS or any other person to fulfill the person's respective obligations.

**191—99.11(505,508) Investments.**

**99.11(1) *Administration of assets.*** The investment program developed by an LPS shall take into account the safety of the company's assets, investment yield and return, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs and investment diversification. The assets of an LPS shall be preserved and administered by or on behalf of the LPS to satisfy the liabilities and obligations of the LPS incident to the reinsurance contract, the insurance securitization, and other related agreements. For the purposes of this subrule, assets do not include letters of credit and guaranties of a parent. An LPS shall only invest its assets in cash and securities that are investment grade at the time of acquisition, provided, however, that an LPS may invest up to 10 percent of its assets in securities or other investments that are not investment grade at the time of acquisition and that are not:

- a. Securities rated 5 or higher by the Securities Valuation Office of the National Association of Insurance Commissioners at the time of acquisition;
- b. Asset-backed or mortgage-backed securities rated 3 or higher by the Securities Valuation Office of the National Association of Insurance Commissioners at the time of acquisition;
- c. Convertible bonds;
- d. Preferred or common stock; and
- e. Private equity or hedge funds.

**99.11(2) *Securitization agreements.*** The LPS securitization, the security-offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other security shall include a disclosure that all or part of the proceeds of such insurance securitization will be used to fund the LPS's obligations to the ceding insurer.

## INSURANCE DIVISION[191](cont'd)

**99.11(3) *Admitted assets.*** Admitted assets of the LPS shall include proceeds from a securitization, premium and other amounts payable by a ceding insurer to the LPS, letters of credit, guaranties of a parent, and any other assets approved by the commissioner, which shall be deemed to be, and reported as, admitted assets of the LPS. The commissioner has the authority to reduce the amount of admitted assets previously approved by the commissioner, other than assets already covered by the Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners, if the commissioner determines that the value of those assets has decreased. At least 30 days prior to reducing the amount of admitted assets previously approved, the commissioner shall notify the LPS and provide the LPS an opportunity to remedy the issues identified by the commissioner.

**99.11(4) *Loans.*** An LPS shall not make a loan to or an investment in any person, other than as permitted in the LPS's plan of operation, without prior written approval of the commissioner, and any such loan or investment must be evidenced by documentation approved by the commissioner. Loans of minimum capital and surplus funds are prohibited.

**99.11(5) *Investments in LPS.*** The organizing life insurance company shall report its ownership in the LPS and value such ownership equal to the audited statutory surplus of the LPS.

**191—99.12(508) *Securities.*** An LPS security shall not be subject to regulation as an insurance or reinsurance contract. An investor in such a security or a holder of such a security shall not be considered to be transacting the business of insurance in this state solely by reason of having an interest in the security. The underwriter's placement or selling agents and their partners, commissioners, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization by an LPS shall not be considered to be insurance producers or brokers or to be conducting business as an insurance or reinsurance company or as an insurance agency, brokerage, intermediary, advisory, or consulting business solely by virtue of their underwriting activities in connection with such securitization.

**191—99.13(505,508) *Permitted reinsurance.***

**99.13(1)** An LPS may reinsure, pursuant to a reinsurance contract, only the risks of a ceding insurer.

**99.13(2)** Unless otherwise approved in advance by the commissioner, an LPS may not assume or retain exposure to reinsurance losses for its own account that are not funded by one or more of the following:

- a. Proceeds from a securitization.
- b. Premium and other amounts payable by the ceding insurer to the LPS pursuant to the reinsurance contract.
- c. Letters of credit.
- d. Guaranties of a parent.
- e. Any return on investment of the items in paragraph "a" or "b" of this subrule.

**99.13(3)** An LPS may cede risks assumed through a reinsurance contract to one or more reinsurers through the purchase of reinsurance, subject to the prior approval of the commissioner.

**99.13(4)** An LPS may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of a reinsurance contract, an insurance securitization, and this chapter, provided such contracts and activities are included in the LPS's plan of operation or are otherwise approved in advance by the commissioner. Such contracts and activities may include but are not limited to: entering into reinsurance contracts; issuing LPS securities; complying with the terms of these contracts or securities; entering into trust, guaranteed investment contract, swap, or other derivative, tax, administration, services reimbursement, or fiscal agent transactions; complying with trust indenture, reinsurance, or retrocession; or entering into other agreements necessary or incidental to effect a reinsurance contract or an insurance securitization in compliance with this chapter and the LPS's plan of operation.

**99.13(5)** Unless otherwise approved in advance by the commissioner, a reinsurance contract shall not contain any provision for payment by the LPS in discharge of its obligations under the reinsurance contract to any person other than the ceding insurer or any receiver of the ceding insurer.

INSURANCE DIVISION[191](cont'd)

**191—99.14(505,508) Certification of actuarial officer.** At the time an LPS files an application for a certificate of authority pursuant to subrule 99.5(2) and thereafter by March 1 of each year that an LPS is in operation and is ceded new business from a ceding insurer, a senior actuarial officer of each ceding insurer shall file with the commissioner a certification that the ceding insurer's transactions with an LPS are not being used to gain an unfair advantage in the pricing of the ceding insurer's products. A ceding insurer shall not be deemed to have an unfair advantage if the pricing of the policies and contracts reinsured by the LPS reflects, at the time those policies and contracts were issued, a reasonable long-term estimate of the cost to the ceding insurer of an alternative third-party transaction and utilizes current pricing assumptions. The ceding insurer shall keep documentation between examinations that sets forth how a senior actuarial officer arrived at the conclusions in the certification.

**191—99.15(505,508) Effective date.** This chapter is applicable on or after [insert the effective date of these rules].

These rules are intended to implement Iowa Code section 505.8 and 2010 Iowa Acts, Senate File 2201, section 9.

## ARC 9105B

### INSURANCE DIVISION[191]

#### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 505.8, the Iowa Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 110, “Standards and Commissioner’s Authority for Companies Deemed to be in Hazardous Financial Condition,” Iowa Administrative Code.

The rules in Chapter 110 set forth the standards which the commissioner may use for identifying insurers found to be in such condition as to render the continuance of their businesses hazardous to their policyholders, creditors, or the general public. This chapter shall not be interpreted to limit the powers granted the Commissioner by any laws or parts of laws of Iowa, nor shall this chapter be interpreted to supersede any laws or parts of laws of Iowa.

This chapter does not provide for waivers.

Any interested person may make written comments on the proposed Chapter 110 on or before October 12, 2010. Written comments may be sent to Matt Hargrafen, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to [matthew.hargrafen@iid.iowa.gov](mailto:matthew.hargrafen@iid.iowa.gov) or via facsimile to (515)281-3059.

A public hearing will be held on October 12, 2010, at 10 a.m. in the Lobby Conference Room of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine remarks to the subject of the proposed rules.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing and mobility impairments, should contact the Insurance Division and advise of specific needs.

These rules are intended to implement Iowa Code section 505.8.

The following amendment is proposed.

INSURANCE DIVISION[191](cont'd)

Adopt the following new 191—Chapter 110:

CHAPTER 110  
STANDARDS AND COMMISSIONER'S AUTHORITY FOR COMPANIES  
DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

**191—110.1(505) Authority.** This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code section 505.8.

**191—110.2(505) Purpose.** The purpose of this chapter is to set forth the standards which the commissioner may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors, or the general public. This chapter shall not be interpreted to limit the powers granted the commissioner by any laws or parts of laws of Iowa, nor shall this chapter be interpreted to supersede any laws or parts of laws of Iowa. Every insurer shall be subject to this chapter.

**191—110.3(505) Definition.**

*"Insurer"* means a licensed insurer under Title XIII of the Iowa Code and fraternal benefit societies licensed under Iowa Code chapter 512B.

**191—110.4(505) Standards.** The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in Iowa might be deemed to be hazardous to its policyholders, creditors, or the general public. The commissioner may consider:

**110.4(1)** Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries.

**110.4(2)** The National Association of Insurance Commissioners' Insurance Regulatory Information System and its other financial analysis solvency tools and reports.

**110.4(3)** Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts.

**110.4(4)** The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.

**110.4(5)** Whether the insurer's operating loss in the last 12-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than 50 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

**110.4(6)** Whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

**110.4(7)** Whether a reinsurer, obligor, or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations which, in the opinion of the commissioner, may affect the solvency of the insurer.

**110.4(8)** Contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount which, in the opinion of the commissioner, may affect the solvency of the insurer.

**110.4(9)** Whether any "controlling person" of an insurer is delinquent in the transmitting or payment of net premiums to the insurer.

**110.4(10)** The age and collectability of receivables.

## INSURANCE DIVISION[191](cont'd)

**110.4(11)** Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position.

**110.4(12)** Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false or misleading information concerning an inquiry.

**110.4(13)** Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner.

**110.4(14)** Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer.

**110.4(15)** Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.

**110.4(16)** Whether the insurer has experienced, or will experience in the foreseeable future, cash flow or liquidity problems.

**110.4(17)** Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles, and standards of practice.

**110.4(18)** Whether management persistently engages in material underreserving that results in adverse development.

**110.4(19)** Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to ensure the insurer's ability to meet its outstanding obligations as they mature.

**110.4(20)** Whether the insurer's underwriting expenses are in excess of 70 percent of net premiums for three years, excluding companies that write more than 75 percent of gross premium in surety. Companies licensed under Iowa Code chapters 508 and 512B are excluded from this subrule.

**110.4(21)** Any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors, or the general public.

**191—110.5(505) Commissioner's authority.**

**110.5(1)** For the purposes of making a determination of an insurer's financial condition under this chapter, the commissioner may:

- a.* Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;
- b.* Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC Accounting Policies and Procedures Manual, state laws, and regulations;
- c.* Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account, or the financial condition of the debtor;
- d.* Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guaranty not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

**110.5(2)** If the commissioner determines that the continued operation of the insurer licensed to transact business in Iowa may be hazardous to its policyholders, creditors, or the general public, then the commissioner may, upon a determination, issue an order requiring the insurer to:

- a.* Reduce the total amount of present and potential liability for policy benefits by reinsurance;
- b.* Reduce, suspend, or limit the volume of business being accepted or renewed;
- c.* Reduce general insurance and commission expenses by specified methods;
- d.* Increase the insurer's capital and surplus;
- e.* Suspend or limit the declaration and payment of a dividend by the insurer to its stockholders or to its policyholders;

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- f.* File reports in a form acceptable to the commissioner concerning the market value of the insurer's assets;
- g.* Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;
- h.* Document the adequacy of premium rates in relation to the risks insured;
- i.* File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the commissioner;
- j.* Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner;
- k.* Provide a business plan to the commissioner in order to continue to transact business in the state;
- l.* Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

**110.5(3)** If the insurer is a foreign insurer, the commissioner's order may be limited to the extent provided by statute.

**110.5(4)** An insurer subject to an order under subrule 110.5(2) may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to 191—3.12(17A). The notice of hearing shall state the time and place of hearing and the conduct, condition or ground upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be in Polk County, Iowa. The commissioner shall hold all hearings under this subrule privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

**191—110.6(505) Judicial review.** Any order or decision of the commissioner shall be subject to review in accordance with 191—3.27(17A) at the instance of any party to the proceedings whose interests are substantially affected.

**191—110.7(505) Separability.** If any provisions of this chapter be held invalid, the remainder shall not be affected.

**191—110.8(505) Effective date.** This chapter is applicable on or after [insert effective date of these rules].

These rules are intended to implement Iowa Code section 505.8.

**ARC 9090B****LABOR SERVICES DIVISION[875]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

The proposed amendment adopts by reference significant changes to federal occupational safety and health standards pertaining to cranes and derricks in the construction industry. The new federal standards

## LABOR SERVICES DIVISION[875](cont'd)

address inspections, use of synthetic slings, assessment of ground conditions, operator qualifications, work around power lines, and other crane and derrick issues.

The principal reasons for adoption of this amendment are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa's regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1) and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on October 12, 2010, a public hearing will be held on October 13, 2010, at 9 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than October 13, 2010, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

No variance procedures are included in this rule. Variance procedures are set forth in 875—Chapter 5. This amendment is intended to implement Iowa Code section 88.5.

The following amendment is proposed.

Amend rule **875—26.1(88)** by inserting the following at the end thereof:  
75 Fed. Reg. 48130 (August 9, 2010)

**ARC 9087B**

## **LABOR SERVICES DIVISION[875]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 89.14 as amended by 2010 Iowa Acts, Senate File 2181, the Boiler and Pressure Vessel Board proposes to amend Chapter 90, “Administration of the Boiler and Pressure Vessel Program,” and Chapter 91, “General Requirements for All Objects,” Iowa Administrative Code.

These proposed amendments implement 2010 Iowa Acts, Senate File 2181, relating to the conversion of power boilers to low-pressure boilers; adopt by reference four American Society of Mechanical Engineers' code cases and the newest version of the National Board Inspection Code; and add an exception to the requirement for control safety data reports.

The purposes of these amendments are to protect the safety of the public and implement legislative intent.

No variance procedures are included in these rules. Applicable variance procedures are set forth in 875—Chapter 81.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on October 12, 2010, a public hearing will be held on October 13, 2010, at 10 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

## LABOR SERVICES DIVISION[875](cont'd)

Interested persons shall submit written data, views, or arguments to be considered in adoption no later than October 13, 2010, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

These amendments are intended to implement Iowa Code chapter 89 as amended by 2010 Iowa Acts, Senate File 2181.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 875—90.15(89):

**875—90.15(89) Conversion of a power boiler to a low-pressure boiler.** The following requirements apply to the conversion of a power boiler to a low-pressure boiler. The owner shall comply with the requirements of subrule 90.15(1) for each conversion. In addition, the owner shall comply with the requirements of subrule 90.15(2) if the converted object will be located outside of a place of public assembly or with the requirements of subrule 90.15(3) if the converted object will be located in a place of public assembly.

**90.15(1) General requirements.**

a. The owner shall provide to the labor commissioner written notice of intent to convert a power boiler to a low-pressure boiler prior to conversion. The required form for a notice of conversion is available at [http://www.iowaworkforce.org/labor/boiler\\_inspection\\_.htm](http://www.iowaworkforce.org/labor/boiler_inspection_.htm). At a minimum the notice shall contain the following:

- (1) Address, uses, and owner of the building where the boiler is located.
- (2) The Iowa identification number assigned to the boiler.
- (3) Name and contact information for the person completing the notice.
- (4) Name and contact information for the contractor or other person planning to perform the conversion.

b. Pressure controls shall not exceed 14 pounds per square inch.

c. All boiler controls shall comply with ASME CSD-1.

d. Safety valves and safety relief valves shall be manufactured in accordance with a national or international standard.

e. One or more spring-pop safety valves meeting the following requirements shall be installed on each steam boiler:

- (1) The valve shall be adjusted and sealed to discharge at a pressure not to exceed 15 psig.
- (2) The valve capacity shall be certified by the National Board.

f. The converted boiler shall be subject to post-conversion external inspection to ensure that the requirements of this rule are met.

**90.15(2) Boilers located outside places of public assembly.** A power boiler that was converted to a low-pressure boiler and that is located outside of a place of public assembly shall not be converted back to a power boiler unless the following requirements are met:

a. The owner shall notify the labor commissioner at least ten days prior to converting the boiler.

b. The owner shall comply with the editions of ASME Section I and CSD-1 in effect at the time of the second conversion.

c. The owner shall comply with the version of 875—Chapter 92 in effect at the time of the second conversion.

**90.15(3) Boilers located in places of public assembly.** A power boiler converted to a low-pressure boiler that is located in a place of public assembly shall comply with 875—Chapter 94.

ITEM 2. Amend rule 875—91.1(89) as follows:

**875—91.1(89) Codes and code cases adopted by reference.**

**91.1(1)** No change.

**91.1(2) ASME code cases.** If the manufacturer of an object listed ASME Code Case 2529, 2568, 2571, or 2571-1 on the manufacturer's data report for the object and the object is otherwise in compliance with all applicable provisions, the object is in compliance with these rules.

LABOR SERVICES DIVISION[875](cont'd)

~~91.1(2)~~ **91.1(3)** *Inspection code adopted by reference.* The National Board Inspection Code (2007 with 2008, 2009, and 2010 addenda) is adopted by reference, and reinstallations, installations, alterations, and repairs after ~~January 1~~ December 22, 2010, shall comply with it.

~~91.1(3)~~ **91.1(4)** *Electric code adopted by reference.* The National ~~Electric~~ Electrical Code (2008) is adopted by reference, and reinstallations and installations after January 1, 2010, shall comply with it.

~~91.1(4)~~ **91.1(5)** *Piping codes adopted by reference.* The Power Piping Code, ASME B31.1 (2007), ASME B31.1a (2008), and ASME B31.1b (2009), and the Building Services Piping Code, ASME B31.9 (2008), are adopted by reference, and reinstallations and installations after April 14, 2010, shall comply with them up to and including the first valve.

~~91.1(5)~~ **91.1(6)** *Control and safety device code adopted by reference.* Controls and Safety Devices for Automatically Fired Boilers (CSD-1) (2009) is adopted by reference, and reinstallations and installations after January 1, 2010, shall comply with it.

~~91.1(6)~~ **91.1(7)** *Mechanical code adopted by reference.* Excluding Section 701.1, Chapters 2 and 7 of the International Mechanical Code (IMC) (2009) are adopted by reference effective January 1, 2010.

~~91.1(7)~~ **91.1(8)** *Oil burning equipment code adopted by reference.* National Fire Protection Association Standard for the Installation of Oil Burning Equipment, NFPA 31 (2006), is adopted by reference.

~~91.1(8)~~ **91.1(9)** *Fuel gas code adopted by reference.* National Fire Protection Association National Fuel Gas Code, NFPA 54 (2009), is adopted by reference.

~~91.1(9)~~ **91.1(10)** *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (2008), is adopted by reference.

~~91.1(10)~~ **91.1(11)** *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (2007), is adopted by reference.

ITEM 3. Adopt the following **new** paragraph **91.20(1)“d”**:

*d.* A boiler with a fuel input rating greater than or equal to 12,500,000 Btu per hour, falling within the scope of NFPA 85, Boiler and Combustion Systems Hazards Code.

**ARC 9089B****MEDICINE BOARD[653]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 147.76 and chapters 148 and 272C, the Board of Medicine hereby gives Notice of Intended Action to amend Chapter 2, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The amendments update language in subrules 2.13(2) and 2.13(4) to clarify what is a confidential record and to allow the Board to share information with the Department of Revenue and the College Student Aid Commission in certain circumstances.

The Board approved these amendments during a regularly scheduled meeting on August 20, 2010.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on October 12, 2010. Such written materials should be sent to Mark E. Bowden, Executive Director, Iowa Board of Medicine, 400 SW Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or E-mailed to [mark.bowden@iowa.gov](mailto:mark.bowden@iowa.gov).

## MEDICINE BOARD[653](cont'd)

There will be a public hearing on October 12, 2010, at 11 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine office is located at 400 SW Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapter 148.

The following amendments are proposed.

ITEM 1. Amend subrule 2.13(2) as follows:

**2.13(2)** Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

*a.* and *b.* No change.

*c.* ~~All information in complaint and investigation files maintained by the agency for purposes of licensee discipline except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing is confidential in accordance with Iowa Code section 272C.6(4).~~ All complaint files, investigation files, other investigation reports, and other investigation information maintained by the agency for purposes of licensee discipline are confidential. (Iowa Code section 272C.6(4))

(1) This information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing. (Iowa Code section 272C.6)

(2) The agency may disclose the investigative file, reports and other information to appropriate licensing authorities within this state, the appropriate licensing authorities in another state, the coordinated licensure information system provided for in the nurse licensure compact contained in Iowa Code section 152E.1 or the advanced practice registered nurse compact contained in Iowa Code section 152E.3, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license.

(3) If the investigation information in the possession of the agency indicates a crime has been committed, the information shall be reported to the appropriate law enforcement agency. However, a final written decision and finding of fact in an agency disciplinary proceeding, including a decision referred to in Iowa Code section 272C.3, subsection 4, is a public record. (Iowa Code section 272C.6(4))

~~*d.* Criminal history or prior misconduct of an applicant for licensure. (Iowa Code chapters 22, 147, and 692)~~

~~*e.* Information relating to the contents of an examination for licensure. (Iowa Code section 147.21)~~

~~*f.* Information relating to the results of an examination for licensure other than final score except for information about the results of an examination which is given to the person who took the examination. (Iowa Code section 147.21)~~

~~*g.* Information contained in professional substance abuse reports or other investigative reports relating to the abuse of controlled substances. (Iowa Code chapter 125 and section 228.2 and 42 U.S.C. 290 ee-3 and ff-3)~~

~~*h.* Minutes and tape recordings of closed meetings of the agency portions of agency meetings held in closed session. (Iowa Code section 21.5(4))~~

~~*i.* The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1). (Iowa Code section 21.5(4)) However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(16) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders. (Iowa Code sections 21.5(4) and 272C.6(4))~~

~~*j.* Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "e." (Iowa Code section 21.5(3))~~

~~*k.* Records which constitute attorney work product, or attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R.C.P. 122(e) R. Civ. P. 1.503, Fed. R. Civ. P. 26(b)(3), and case law.~~

MEDICINE BOARD[653](cont'd)

Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

k. No change.

ITEM 2. Amend subrule 2.13(4) as follows:

**2.13(4)** Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit, the department of revenue, and the college student aid commission through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J, 261, 272D or 598.

**ARC 9092B**

## **PUBLIC HEALTH DEPARTMENT[641]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 9, “Outpatient Diabetes Education Programs,” Iowa Administrative Code.

The rules in Chapter 9 describe the standards for outpatient diabetes self-management education programs and the procedures programs must follow for certification by the Iowa Department of Public Health that will allow for third-party reimbursement. The proposed amendments expand credentialing bodies, clarify curriculum, add definitions and update bureau and division references and contact information.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 12, 2010. Such written materials should be directed to Jill Myers Geadelmann, Chief, Bureau of Chronic Disease Prevention and Management, Iowa Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319-0075.

Also, there will be a public hearing on October 12, 2010, at 10:30 a.m. in Room 518 of the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa, at which time persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Iowa Department of Public Health and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 135.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **641—9.2(135)**:

“*AADE*” means the American Association of Diabetes Educators.

“*Accredited*” means that a program is currently accredited by the American Association of Diabetes Educators.

“*Recognized*” means that a program is currently recognized by the American Diabetes Association.

ITEM 2. Amend rule **641—9.2(135)**, definitions of “Licensed dietitian,” “Pharmacist,” “Physician” and “Registered nurse,” as follows:

“*Licensed dietitian*” means a person currently licensed to practice dietetics ~~under Iowa Code chapter 152A.~~

“*Pharmacist*” means a person currently licensed to practice pharmacy ~~under Iowa Code chapter 155.~~

“*Physician*” means a person currently licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy ~~under Iowa Code chapters 148 and 150A.~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

“Registered nurse” means a person currently licensed to practice professional nursing ~~under Iowa Code chapter 152.~~

ITEM 3. Amend subrule 9.3(1) as follows:

**9.3(1)** Develop minimum standards in ~~consultation~~ coordination with the American Diabetes Association, ~~Great Plains affiliate~~ and the American Association of Diabetes Educators.

ITEM 4. Amend paragraph **9.3(3)“c”** as follows:

c. The certification package is available from the Bureau of ~~Health Promotion~~ Chronic Disease Prevention and Management, Division of ~~Substance Abuse and Health Promotion and Chronic Disease Prevention~~, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075.

ITEM 5. Amend rule 641—9.4(135) as follows:

**641—9.4(135) Application procedures for American Diabetes Association-recognized or American Association of Diabetes Educators-accredited programs.** When the program is recognized by the American Diabetes Association or accredited by the American Association of Diabetes Educators, the program shall apply for certification to the department by submitting a copy of the Certificate of Recognition provided by ADA or the Certificate of Accreditation provided by AADE, the name, address and telephone number for the program, the name of the program coordinator and the name of the program physician. In addition, since the ADA recognition program or the AADE accreditation program does not require the participation of a pharmacist but the Iowa law does, an ADA-recognized or AADE-accredited program shall submit the name(s), license number(s) and continuing education hours of the pharmacist(s) who serves as program staff. A pharmacist shall be a primary or supporting instructor or advisory committee member and shall meet the education requirements in 9.8(6), 9.8(7) or 9.8(8). ~~The expiration date for the certification of an ADA-recognized program shall be six months after the expiration date of the ADA recognition.~~

ITEM 6. Amend rule 641—9.5(135) as follows:

**641—9.5(135) Renewal procedures for American Diabetes Association-recognized or American Association of Diabetes Educators-accredited programs.** Programs shall renew their certification every three years, at least 30 days prior to the expiration date. To apply for renewal of certification, the ADA-recognized or AADE-accredited program shall submit a copy of the new ADA Certificate of Recognition or AADE Certificate of Accreditation, the name, address and telephone number for the program, the name of the program coordinator, the name of the program physician, and the name(s), license number(s), and continuing education hours of the pharmacist(s) who serves as program staff. A pharmacist shall be a primary or supporting instructor or advisory committee member and shall meet the continuing education requirements in ~~9.9(6)~~ 9.9(7).

ITEM 7. Amend rule 641—9.6(135), catchwords, as follows:

**641—9.6(135) Application procedures for programs not recognized by the American Diabetes Association or accredited by the American Association of Diabetes Educators.**

ITEM 8. Amend subrule 9.6(2) as follows:

**9.6(2)** Applications from programs not recognized by ADA or accredited by AADE shall provide the following information:

a. to d. No change.

e. A description of the curriculum designed to instruct the participant with diabetes how to achieve self-management competency. The curriculum shall cover the same ~~15~~ content areas as are required by the ADA for recognition or the AADE for accreditation including: ~~—These topics are listed below.~~

(1) Diabetes overview: includes content about the diabetes disease process, pathophysiology and treatment/management options.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

(2) Stress and psychological adjustment: includes developing personal strategies to address psychological issues, healthy coping, and problem solving.

(3) Family involvement and social support: includes strategies for safety and risk reduction and creating healthy environments and social supports.

(4) Nutrition: includes incorporating nutritional management (healthy eating) into lifestyle.

(5) Exercise and activity: includes incorporating physical activity (being active) into lifestyle.

(6) Medications: includes using medications safely and for maximum therapeutic benefit.

(7) Monitoring and use of results: includes monitoring blood glucose and other health indicators or parameters and interpreting and using the results for self-management decision making.

~~(8) Relationship among nutrition, exercise, medication and blood glucose levels.~~

~~(9) (8) Prevention Reducing risks: includes prevention, detection, and treatment of acute complications and chronic complications as well as foot, skin and dental care.~~

~~(10) Prevention, detection, and treatment of chronic complications.~~

~~(11) Foot, skin, and dental care.~~

(12) (9) Behavior change strategies, goal setting, risk-factor reduction, and problem solving; includes personal goals and strategies to address risks and build positive habits.

~~(13) Benefits, risks, and management options for improving glucose control.~~

(14) (10) Preconception care, pregnancy, and gestational diabetes.

~~(15) (11) Use of health care systems and community resources.~~

ITEM 9. Amend rule 641—9.7(135), catchwords, as follows:

**641—9.7(135) Diabetes program management for programs not recognized by the American Diabetes Association or accredited by the American Association of Diabetes Educators.**

ITEM 10. Amend rule 641—9.8(135), catchwords, as follows:

**641—9.8(135) Program staff for programs not recognized by the American Diabetes Association or accredited by the American Association of Diabetes Educators.**

ITEM 11. Amend rule 641—9.9(135) as follows:

**641—9.9(135) Renewal application procedures for programs not recognized by the American Diabetes Association or accredited by the American Association of Diabetes Educators.** Every three years, programs shall provide the following information to the department at least 30 days prior to the expiration date.

**9.9(1) to 9.9(3)** No change.

**9.9(4)** A description of the program evaluation process.

~~9.9(4)~~ **9.9(5)** A description of any changes from the previous application.

~~9.9(5)~~ **9.9(6)** A list of new program staff by name, license number or registration number, and position with the program. New staff who will serve as primary instructors shall submit documentation of their training in diabetes as addressed in 9.8(6). New staff serving as supporting instructors shall submit documentation of their training as addressed in 9.8(7).

~~9.9(6)~~ **9.9(7)** Documentation of continuing education hours accrued since the previous application for current staff and new staff.

*a. to c.* No change.

ITEM 12. Amend rule 641—9.10(135) as follows:

**641—9.10(135) Annual report.** Summary data shall be completed annually by each program and sent to the department. The data shall include but not be limited to the number of times the program was presented, the number of outpatients that participated, and a summarized description of program participants including type of diabetes, age, race and sex.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 13. Amend subrule 9.12(1) as follows:

**9.12(1)** The department shall accept complaints of alleged problems relating to certified outpatient diabetes self-management programs. The information shall state in a reasonably specific manner the basis of the complaints and be presented in writing, in person or by telephone to: Bureau of ~~Health Promotion~~ Chronic Disease Prevention and Management, Division of ~~Substance Abuse and Health Promotion and Chronic Disease Prevention~~, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; (515)281-6779 5616.

ITEM 14. Amend subrule 9.14(7) as follows:

**9.14(7)** *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the director by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075.

**ARC 9096B**

## **PUBLIC HEALTH DEPARTMENT[641]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of 2009 Iowa Code Supplement section 135.175(5) as amended by 2010 Iowa Acts, Senate File 2384, section 5, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 111, “Iowa Needs Nurses Now Infrastructure Account,” Iowa Administrative Code.

These rules provide for the awarding of grants for infrastructure to improve the education of nurses and nurse educators in Iowa and to enhance the clinical experience for nurses.

Any interested person may make written comments or suggestions on the proposed rules on or before October 12, 2010. Such written comments should be directed to Michelle Holst, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-6384 or by E-mail to [mholst@idph.state.ia.us](mailto:mholst@idph.state.ia.us).

These rules are intended to implement 2009 Iowa Code Supplement section 135.175(5) as amended by 2010 Iowa Acts, Senate File 2384, section 5.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 111:

### **CHAPTER 111**

#### **IOWA NEEDS NURSES NOW INFRASTRUCTURE ACCOUNT**

**641—111.1(135) Scope and purpose.** The Iowa needs nurses now infrastructure account is established to award grants for clinical simulators, laboratory facilities, health information technology and other infrastructure to improve the education of nurses and nurse educators in the state and to enhance the clinical experience for nurses. Moneys in the account shall consist of moneys appropriated or allocated for deposit in or received by the fund or the account and specifically dedicated to the Iowa needs nurses now infrastructure account for the purposes of the account. Grants from the account may not be used for the construction of buildings. Grants awarded shall authorize the use of a reasonable portion of the grant moneys for training in the use of the infrastructure purchased with the grant moneys. These rules shall be implemented only to the extent funding is available.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**641—111.2(135) Definitions.** For the purposes of these rules, the following definitions shall apply:

*“Department ”* means the Iowa department of public health.

*“Iowa Needs Nurses Now Coalition ”* means the coalition of nurse, health, education and business leaders who understand that nurses are important to families and communities.

**641—111.3(135) Eligibility and criteria.** To be eligible for an Iowa needs nurses now infrastructure grant, an organization shall:

**111.3(1)** Be an educational institution with prelicensure nursing education programs approved by the Iowa board of nursing.

**111.3(2)** Address the long-term sustainability of the infrastructure project to be funded through the grant.

**641—111.4(135) Review process.**

**111.4(1)** The department shall follow requirements for competitive selection contained in 641—Chapter 176 in awarding grants pursuant to this chapter.

**111.4(2)** The department shall establish a request for proposal and application process for organizations eligible to receive funding. The review process and review criteria shall be described in the request for proposal.

**111.4(3)** The department shall establish a committee to review proposals and make recommendations to the department. The committee membership may include representation from the following:

- a. Iowa board of nursing;
- b. Iowa Nurses Association;
- c. Iowa Needs Nurses Now Coalition; and
- d. Iowa department of education.

**111.4(4)** The department shall consider financial need of the applying entity as a criterion in determining grant awards.

**111.4(5)** The department shall consider geographic areas where there is limited access to clinical facilities due to geographic location or limited patient census to support eligible students as a criterion in determining grant awards.

**111.4(6)** The department shall consider collaboration between education programs and clinical facilities as a criterion in determining grant awards.

**641—111.5(135) Performance standards.** A grantee shall provide clinical experiences for nurses and nurse educators that:

1. Expand the capacity of its nursing program in terms of opportunities for increased learning by the students completing the program.
2. Offer educational opportunities in geographic areas where there is limited access to clinical facilities due to geographic location or limited patient census to support eligible students.
3. Enhance learning opportunities for the students in the nursing program.

**641—111.6(135) Appeals.** An applicant may appeal the denial of a properly submitted grant application. Appeals shall be governed by rule 641—176.8(135,17A).

These rules are intended to implement 2009 Iowa Code Supplement section 135.175(5) as amended by 2010 Iowa Acts, Senate File 2384, section 5.

**ARC 9093B****PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of 2009 Iowa Code Supplement section 135A.9, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 186, “Governmental Public Health Advisory Bodies,” Iowa Administrative Code.

The Iowa Public Health Modernization Act was established to modernize the governmental public health system to meet the challenges of the twenty-first century and improve governmental public health system capacity in order to provide the equitable delivery of public health services across the state. Pursuant to 2009 Iowa Code Supplement chapter 135A, the Department has established an advisory council and evaluation committee to enhance the governmental public health system and evaluate progress towards the accreditation of local and state public health agencies.

Any interested person may make written comments or suggestions on the proposed rules on or before October 12, 2010. Such written comments should be directed to Joy Harris, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-6013 or by E-mail to [jharris@idph.state.ia.us](mailto:jharris@idph.state.ia.us).

These rules are intended to implement 2009 Iowa Code Supplement sections 135A.4 and 135A.5. The following amendment is proposed.

Adopt the following **new** 641—Chapter 186:

CHAPTER 186  
GOVERNMENTAL PUBLIC HEALTH ADVISORY BODIES

**641—186.1(135A) Purpose.** The governmental public health advisory council and the governmental public health evaluation committee shall advise the department regarding the coordination and implementation of the voluntary accreditation of designated local public health agencies and of the department and the evaluation of the accreditation program and governmental public health system.

**641—186.2(135A) Definitions.** For the purposes of this chapter, the following definitions apply:

“*Committee*” means the governmental public health evaluation committee as established in 2009 Iowa Code Supplement section 135A.5.

“*Council*” means the governmental public health advisory council as established in 2009 Iowa Code Supplement section 135A.4.

“*Department*” means the Iowa department of public health.

“*Designated local public health agency*” means an entity that is either governed by or contractually responsible to a local board of health and designated by the local board to comply with the Iowa public health standards for a jurisdiction.

“*Director*” means the director of the Iowa department of public health.

**641—186.3(135A) Roles and responsibilities of advisory bodies.** Two advisory bodies shall provide guidance to the department regarding the governmental public health system.

**186.3(1)** A governmental public health advisory council is established to advise the department and make policy recommendations to the department concerning administration, implementation, and coordination of 2009 Iowa Code Supplement chapter 135A and to make recommendations to the department regarding the governmental public health system.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**186.3(2)** The council shall annually provide a report to the department by July 1.

**186.3(3)** A governmental public health evaluation committee is established to develop and implement the evaluation of the governmental public health system and voluntary accreditation program as described in 2009 Iowa Code Supplement section 135A.5.

**186.3(4)** The committee shall annually provide a report to the department by July 1.

**186.3(5)** Recommendations from the council and committee shall be provided to the department director in writing. The department director may provide those recommendations to the state board of health.

**186.3(6)** Communication. The council and committee shall ensure communication between the two bodies by:

- a. Providing regular updates to the other body through written reports at each meeting.
- b. Stipulating that the chairperson and vice chairperson of the committee and council hold semiannual conference calls.
- c. Meeting together at least biennially.
- d. Responding to requests from one body to the other that shall be made in writing and appear in new business on the agenda of the next regularly scheduled meeting.

**641—186.4(135A) Officers.**

**186.4(1)** The officers of the council and committee shall be a chairperson and vice chairperson for each body.

- a. The officers shall be elected at the first meeting each September.
- b. Vacancy in the office of chairperson shall be filled by the vice chairperson.
- c. Vacancy in the office of vice chairperson shall be filled by election at the next regularly scheduled meeting after the vacancy occurs.

**186.4(2)** Duties of officers.

- a. The chairperson of the council shall preside at all meetings of the council, and the chairperson of the committee shall preside at all meetings of the committee.
- b. Robert's Rules of Order shall govern all meetings.
- c. If the chairperson is absent or unable to act, the vice chairperson shall perform the duties of the chairperson. When so acting, the vice chairperson shall have all the powers of and be subject to all the restrictions upon the chairperson.
- d. The vice chairperson shall also perform such other duties as may be assigned by the chairperson.

**641—186.5(135A) Members of advisory bodies.**

**186.5(1)** The director, pursuant to 2009 Iowa Code Supplement sections 135A.4 and 135A.5, shall appoint members of the council and committee.

- a. Members shall serve for a term of two years and may be reappointed for a maximum of three consecutive terms. Initial appointments shall be in staggered terms.
- b. Vacancies shall be filled in the same manner in which the original appointments were made for the balance of the unexpired term.

**186.5(2)** A member's designee shall meet the same criteria for which the member was appointed. The member shall notify the department when the designee will be in attendance. The designee shall have voting rights.

**186.5(3)** Two consecutive unexcused absences of a member or designee shall be grounds for the director to consider dismissal of the council member or committee member and to appoint another. The department staff person assigned to the council or committee is charged with providing notification of absences to the director.

**641—186.6(135A) Meetings.** The council and committee shall each hold a meeting at least quarterly. Notice of routine meetings and agenda should be made available to the members a minimum of five working days prior to the meeting.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**186.6(1)** Persons wishing to submit materials for consideration by the council or committee should submit the materials electronically to the department at least 14 days in advance of the scheduled meeting to ensure that members have adequate time to review the materials.

**186.6(2)** Persons wishing to make a presentation to the council or committee shall submit the request to the department not less than 14 days prior to the meeting. Presentations upon matters appearing on the agenda may be made either at the discretion of the chairperson or the department.

**186.6(3)** All meetings are open to the public in accordance with the open meetings law, Iowa Code chapter 21.

**186.6(4)** The council or committee may conduct a meeting by electronic means pursuant to Iowa Code section 21.8.

**186.6(5)** A simple majority of appointed members shall be considered a quorum.

**186.6(6)** Any member or member's designee who is unable to attend a meeting shall notify the department at least 24 hours prior to the start of a regularly scheduled meeting; a meeting may be canceled if a quorum will not be present.

**186.6(7)** When a quorum is present, a position is carried by affirmative vote of the majority of those present.

**186.6(8)** Minutes. Minutes of all meetings showing the date, time, place, members present, members absent, and the general topics discussed shall be kept. The minutes shall reflect the actions agreed upon by the members for topics requiring the members' input or consensus.

**641—186.7(135A) Conflict of interest.** A conflict of interest exists when members of the council or committee participate in a way that directly affects the financial interests of the council or committee members.

**186.7(1)** To avoid conflict of interest issues, council or committee members who have a financial interest in an action must abstain from participating in the entire process including discussion and voting.

**186.7(2)** The council or committee members who have or think they may have a conflict of interest shall declare that there is or may be a conflict of interest and request a determination from the department.

**186.7(3)** If a conflict of interest is determined to exist, council or committee members shall abstain from voting and shall be recorded as abstaining when votes are taken.

**641—186.8(135A) Subcommittees.** The council and committee may designate one or more subcommittees to perform such duties as may be deemed necessary.

These rules are intended to implement 2009 Iowa Code Supplement sections 135A.4 and 135A.5.

**ARC 9085B****PUBLIC SAFETY DEPARTMENT[661]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 17A.3 and 321.4, the Department of Public Safety hereby gives Notice of Intended Action to rescind Chapter 91, “Weapons Permits,” and adopt new Chapter 91, “Weapons and Iowa Professional Permits to Carry Weapons,” Iowa Administrative Code.

Iowa Code chapter 724 establishes a system of permitting for persons in Iowa to carry weapons. The Department of Public Safety is assigned the duties of designating as collector's items certain firearms that are classified as offensive weapons, issuing professional permits to carry weapons to state employees whose need to go armed is part of their job duties and to nonresidents of Iowa whose need to go armed is

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

based on their employment, and publishing the forms for the issuance of Iowa permits to carry weapons and permits to acquire handguns.

Major changes to Iowa Code chapter 724 were enacted by the 83rd Iowa General Assembly in 2010 Iowa Acts, Senate File 2379 and Senate File 2357. The amendments proposed herein update the provisions regarding the Commissioner's issuance of carry permits while retaining and updating rules regarding the publishing of forms and the designation of certain firearms as collector's items.

A public hearing will be held on October 13, 2010, at 10 a.m. in the First Floor Public Conference Room, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines. Any interested person may speak at the public hearing or may submit written comments to the Agency Rules Administrator at the public hearing; by regular mail to Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by fax to (515)725-6195; or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us). Written comments should be submitted no later than 4:30 p.m. on October 13, 2010.

Administrative rules of the Department of Public Safety are subject to the waiver provisions of rule 661—10.222(17A), which sets out specific criteria and procedures for waivers of rules. The Department is unable to waive any requirement established as mandatory by statute.

This amendment is intended to implement Iowa Code chapter 724 as amended by 2010 Iowa Acts, Senate File 2379 and Senate File 2357.

The following amendment is proposed.

Rescind 661—Chapter 91 and adopt the following **new** chapter in lieu thereof:

CHAPTER 91  
WEAPONS AND IOWA PROFESSIONAL PERMITS TO CARRY WEAPONS

**661—91.1(724) Definitions.** The following definitions apply to rules in this chapter:

*“Addicted to the use of alcohol”* means a person who uses alcohol and has lost the power of self-control with reference to the use of alcohol. Such use is not limited to the use of alcohol on a particular day, or within a matter of days or weeks before, but rather that the use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be addicted to the use of alcohol even though the alcohol is not being used at the precise time the person applies for an Iowa permit to carry weapons or during the validity of the permit. An inference of addiction to the use of alcohol may be drawn from evidence of a recent use of alcohol or a pattern of use that reasonably covers the present time, e.g., voluntary or involuntary committal to any inpatient or outpatient alcohol treatment program in the past three years; two or more arrests, one of which resulted in a conviction, for unlawful use or possession of alcohol or other criminal act committed while under the influence of alcohol in the past year; three or more arrests, one of which resulted in a conviction, for unlawful use or possession of alcohol or other criminal act committed while under the influence of alcohol in the past five years if the most recent arrest occurred in the past year; disciplinary action taken by any employer or organization for prohibited use or possession of alcohol or alcohol rehabilitation failure in the past year; a test of a person's bodily fluid that indicates the person to have engaged in unlawful acts involving alcohol, provided that the test was administered within the past year; or other pattern of conduct that a reasonable person would believe indicates addiction to the use of alcohol.

*“Adjudicated as a mental defective”* means a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

1. Is a danger to the person's self or to others; or
2. Lacks the mental capacity to contract or manage the person's own affairs.

The term shall include:

- A finding of insanity by a court in a criminal case; and
- Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

*“Applicant”* means a person who is applying for a permit to carry weapons.

*“Background check”* means an inquiry through the IOWA system to NICS, the IOWA and the National Crime Information Center (NCIC) systems person files and the driver’s license file of the applicant as well as other available sources of information to be used to determine eligibility.

*“Commissioner”* means the commissioner of the Iowa department of public safety or, as applicable, the commissioner’s designee.

*“Committed to a mental institution”* means a formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily either as an inpatient or outpatient. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug or alcohol abuse. The term does not include admission to a mental institution for observation or a voluntary admission to a mental institution.

*“Crime punishable by imprisonment for a term exceeding one year”* means any federal, state or foreign offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of one year. The term shall not include any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or any state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction unless such pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, or unless the person is prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

*“Felony”* means any crime punishable by imprisonment for a term exceeding one year as defined in these rules or any crime involving a firearm or explosive that is punishable by imprisonment for a term exceeding one year and is classified as a misdemeanor under the laws of this state.

*“Firearm training documentation”* means a photocopy of a certificate of completion or any similar document indicating completion of any firearm training program course; an affidavit from the instructor, school, organization or group that conducted or taught a firearm training program; a copy of or the display of an honorable discharge or general discharge under honorable conditions or Form DD-214 for personnel released or retired from active duty with the armed forces of the United States; or possession of a certificate of completion of basic training with a service record of successful completion of small arms training and qualification for active duty personnel in the armed forces of the United States. For a renewal application, firearm training documentation also includes documentation of qualifying on a firing range under the supervision of an instructor certified by the National Rifle Association or the Iowa law enforcement academy or another state’s department of public safety, state police department, or similar certifying body.

*“Firearm training program”* means any National Rifle Association handgun safety training course; any handgun safety training course available to the general public utilizing instructors certified by the National Rifle Association or the Iowa law enforcement academy or another state’s department of public safety, state police department, or similar certifying body; any handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency approved by the Iowa department of public safety; or completion of small arms training while serving with the armed forces of the United States. Any person or entity seeking approval by the Iowa department of public safety for a handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency, other than those certified by the National Rifle Association or the Iowa law enforcement academy or courses conducted by instructors certified by the National Rifle Association or the Iowa law enforcement academy, shall submit a detailed description of the course content to the commissioner for review. Any handgun safety training course submitted for review shall be reviewed

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

by the commissioner to determine if the course is substantially equivalent to the Iowa law enforcement academy marksmanship qualification course.

*"Identification documentation for an Iowa resident"* means any of the following:

1. A driver's license or nonoperator identification card that contains a photograph of the person and that has been issued by the Iowa department of transportation; or
2. A motor vehicle license or nonoperator identification card that contains a photograph of the person and that has been issued by a state other than Iowa and at least one current document indicating Iowa residency, including a residential lease agreement, utility bill, voter registration, tuition receipt for a college or university in Iowa, or other documentation that is acceptable to the officer issuing the permit and that indicates the intent of the person's presence in Iowa is something other than merely transitory in nature; or
3. A document which contains the name, place of residence, date of birth and photograph of the holder issued by or under the authority of the United States, a state or a political subdivision of a state and which is of a type intended or commonly accepted for the purpose of identification of individuals and at least one current document indicating Iowa residency, including a residential lease agreement, utility bill, voter registration, tuition receipt for a college or university in Iowa, or other documentation that is acceptable to the officer issuing the permit and that indicates the intent of the person's presence in Iowa is something other than merely transitory in nature; or
4. A motor vehicle license or nonoperator identification card that contains a photograph of the person and that has been issued by a state other than Iowa and a document indicating that the person is a member of the United States armed forces on active duty and whose permanent duty station is located in Iowa; or
5. A driver's license or nonoperator identification card that contains a photograph of the person and that has been issued by the Iowa department of transportation and an immigration document containing the alien registration number (ARN) of a permanent resident alien or nonimmigrant alien and documentation indicating that the person has resided in the state for at least 90 consecutive days prior to the person's making application. A nonimmigrant alien shall also be required to display a valid hunting license issued in any state.

*"Identification documentation for a nonresident"* means a motor vehicle license or nonoperator identification card which has been issued by a state other than Iowa and which contains a photograph of the person to whom it was issued.

*"IOWA system"* means the Iowa on-line warrants and articles criminal justice information system operated by the Iowa department of public safety for use by law enforcement and criminal justice agencies in the exchange of criminal history and other criminal justice information.

*"Misdemeanor crime of domestic violence"* means an offense that:

1. Is a misdemeanor under federal or state law; and
2. Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

*"New application"* means an application for an Iowa professional permit to carry weapons that is filed when the applicant does not currently hold an Iowa permit to carry weapons or when the applicant does not file the application at least 30 days prior to the expiration of a currently held Iowa permit to carry weapons.

*"NICS"* means the National Instant Criminal Background Check System established by the United States Attorney General pursuant to United States Code 18 U.S.C. § 922(t).

*"Professional permit to carry weapons"* means a permit to carry weapons issued to a person whose employment in a private investigation business or private security business licensed under Iowa Code chapter 80A, or whose employment as a peace officer, correctional officer with the Iowa department of corrections, private security officer, bank messenger or other person transporting property of a value requiring security, or whose employment in police work reasonably justifies that person's going

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armed. Property of value includes large quantities of cash transported in an armored car, negotiable instruments, gems, other high-value items transported by couriers, and other high-value property that may be vulnerable. Such a permit is valid only while the permitted person is engaged in the employment stated on the permit and while the person is traveling to and from that employment.

*“Qualifying on a firing range”* means successful completion of a course of live fire on a firing range under the supervision of an instructor certified by the National Rifle Association, the Iowa law enforcement academy, or another state’s department of public safety, state police department, or similar certifying body.

*“Renewal application”* means an application for an Iowa professional permit to carry weapons filed at least 30 days prior to the expiration of a currently held permit.

*“State employee”* means a person whose need to go armed arises out of employment by the state of Iowa. “State employee” includes a railroad special agent as described in Iowa Code chapter 80.

*“State of residence”* means the state in which an individual resides for the purposes of administering United States Code 18 U.S.C. § 921, et seq. An individual resides in a state if the individual is present in a state with the intention of making a home in that state. If an individual is on active duty as a member of the armed forces, the individual’s state of residence is the state in which the individual’s permanent duty station is located. An alien who is in the United States legally shall be considered to be a resident of a state only if the alien is residing in the state and has resided in the state for a period of at least 90 consecutive days prior to the date of application for an Iowa permit to carry weapons.

*“State of residence of active duty military personnel”* means the state of record for the purposes of administering United States Code 18 U.S.C. § 921, et seq., also known as the Gun Control Act of 1968. Specific Iowa examples include:

1. Iowa resident activated by the Iowa national guard – Iowa resident.
2. Iowa resident activated by a United States military reserve unit based in Iowa – Iowa resident.
3. Iowa resident activated by a non-Iowa national guard unit – resident of the state in which the national guard unit is based.
4. Iowa resident activated by a United States military reserve unit based outside Iowa – resident of the state in which the military reserve unit is based.
5. Iowa resident activated by any branch of the United States military – resident of the state in which the permanent duty station is located as shown on the person’s military orders. In most overseas deployments, the permanent duty station remains at the base in the United States from which the active duty member was deployed, although there are a few overseas permanent duty stations.
6. Nonresident of Iowa assigned to a permanent duty station in Iowa – Iowa resident.
7. Nonresident of Iowa who maintains a domicile in Iowa and who commutes daily to a permanent duty station in another state – Iowa resident and resident of the state in which the person’s permanent duty station is located.

*“Unlawful user of or addicted to any controlled substance”* means a person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance or any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person applies for an Iowa permit to carry weapons or seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. For a current or former member of the armed forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure.

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**661—91.2(724) Forms.** The following forms, the use of which is required by provisions of this chapter, are provided by the commissioner to Iowa sheriffs:

1. Form WP1. Professional Permit to Carry Weapons
2. Form WP2. Nonprofessional Permit to Carry Weapons
3. Form WP3. Application for Annual Permit to Acquire Pistols or Revolvers
4. Form WP4. Annual Permit to Acquire Pistols or Revolvers
5. Form WP5. Application for Permit to Carry Weapons
6. Form WP6. Revocation/Cancellation of Permit to Carry/Permit to Acquire Weapons
7. Form WP7. Certified Peace Officer Permit to Carry Weapons
8. Form WP8. Reserve Peace Officer Permit to Carry Weapons
9. Form WP9. Authorization for Wallet-Size Permit to Carry Weapons, to be generated by the

issuing officer including the type of permit, and, at a minimum, the individual identifiers of name and date of birth. A professional permit to carry weapons shall state the nature of employment requiring the holder to go armed.

**661—91.3(724) Federal and state prohibitions—possession, permit to carry weapons.**

**91.3(1)** United States Code 18 U.S.C. § 922(g) and § 922(n) prohibit the possession of firearms by any person:

- a. Who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; or
- b. Who is a fugitive from justice; or
- c. Who is an unlawful user of or addicted to any controlled substance; or
- d. Who has been adjudicated as a mental defective or who has been committed to a mental institution; or

e. Who, being an alien, is illegally or unlawfully in the United States. Persons lawfully admitted to the United States as immigrant or nonimmigrant aliens must have resided in Iowa for at least 90 continuous days before becoming eligible for an Iowa permit to carry weapons. Additionally, nonimmigrant aliens must display a current valid hunting license issued in any state; or

- f. Who has been discharged from the armed forces under dishonorable conditions; or
- g. Who, having been a citizen of the United States, has renounced the person's citizenship; or
- h. Who is subject to a court order that:

(1) Was issued after a hearing for which such person received actual notice and at which such person had an opportunity to participate;

(2) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(3) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

- i. Who has been convicted in any court of a misdemeanor crime of domestic violence; or
- j. Who is under indictment for a crime punishable by imprisonment for a term exceeding one year.

**91.3(2)** Iowa Code chapter 724 prohibits the issuance of an Iowa professional permit to carry weapons to any person:

a. Who is younger than 18 years of age for a private security officer licensed by the Iowa department of public safety, or otherwise who is less than 21 years of age; or

b. Who is addicted to the use of alcohol; or

c. For whom probable cause exists to believe, based upon documented specific actions of the person, where at least one of the actions occurred within two years immediately preceding the date of the permit application, that the person is likely to use a weapon unlawfully or in such other manner as would endanger the person's self or others; or

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- d.* Who has been convicted of a felony in a state or federal court, or who has been adjudicated delinquent on the basis of conduct that would constitute a felony if committed by an adult; or
- e.* Who is subject to a court order that:
  - (1) Was issued after a hearing for which such person received actual notice and at which such person had an opportunity to participate;
  - (2) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
  - (3) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- f.* Who has been convicted in any court of a misdemeanor crime of domestic violence; or
- g.* Who has, within the previous three years, been convicted of any serious or aggravated misdemeanor defined in Iowa Code chapter 708 not involving the use of a firearm or explosive.

**661—91.4(724) Application procedures for an Iowa professional permit to carry weapons.**

**91.4(1)** A nonresident of Iowa or a state employee who is required by employment to go armed may apply to the commissioner for a professional permit to carry weapons. The applicant shall comply with all of the following:

- a.* Submit a fully and accurately completed and signed application for permit to carry weapons.
- b.* Submit firearm training documentation. For a new application, training may have occurred at any time prior to the submission of the application. For a renewal application, training must have occurred within the 12-month period prior to the expiration date displayed on the applicant's current permit.
- c.* Submit the required fee:
  - (1) \$50 for a new application, or
  - (2) \$25 for a renewal application.
- d.* Display identification documentation as defined in rule 661—91.1(724) or provide a photocopy thereof.

**91.4(2)** The commissioner will return an incomplete application to the applicant.

**661—91.5(724) Issuance or denial of application for permit to carry weapons.**

**91.5(1)** Upon receipt of a completed application, the commissioner shall conduct a background check to determine that issuance of a permit to the applicant is not prohibited pursuant to rule 661—91.3(724).

**91.5(2)** Within 30 days, the commissioner shall approve or deny an application submitted pursuant to subrule 91.4(1). The commissioner's failure to act within 30 days of receipt of a complete application shall result in an application's being deemed to have been approved.

**91.5(3)** A permit issued pursuant to this chapter shall be delivered to the applicant by U.S. mail or in person at the request of the applicant.

**91.5(4)** In the event an application is denied pursuant to this chapter, the commissioner shall issue a written statement of the reasons for the denial.

**91.5(5)** The commissioner may conduct a background check annually on a person issued a permit to carry weapons pursuant to this chapter but such check shall not include a NICS inquiry.

**661—91.6(724) Suspension or revocation of permit to carry weapons.**

**91.6(1)** When the commissioner finds that a person who has been issued a permit to carry weapons has been arrested for a disqualifying offense or is the subject of proceedings that could lead to the person's ineligibility for such permit, the commissioner may immediately suspend the permit.

**91.6(2)** A permit holder shall be notified immediately of such suspension by personal service or certified mail. The suspension shall become effective upon the permit holder's receipt of such notice. If

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notified by personal service, the permit shall be surrendered to the person serving such notice for return to the commissioner. If notified by certified mail, the permit holder will be instructed to return the permit to the commissioner.

**91.6(3)** If the arrest or proceeding does not result in a disqualifying conviction or finding against the permit holder, the commissioner shall immediately reinstate the permit upon proof of the matter's final disposition and shall return the permit to the permit holder.

**91.6(4)** If the arrest or proceeding results in a disqualifying conviction or finding against the permit holder, the commissioner shall revoke the permit.

**661—91.7(724) Appeals.**

**91.7(1)** If the commissioner denies, suspends or revokes a professional permit to carry weapons for any reason other than the federal disqualifiers in subrule 91.3(1) or reasons in paragraph 91.3(2) "e" or "f," the applicant or permit holder may file an appeal with an administrative law judge by filing a copy of the denial, suspension, or revocation notice with a written statement that clearly states the applicant's reasons rebutting the denial, suspension, or revocation.

**91.7(2)** If the commissioner denies, suspends or revokes a professional permit to carry weapons solely for one or more of the ten federal disqualifiers in subrule 91.3(1) or reasons in paragraph 91.3(2) "e" or "f," the applicant or permit holder may pursue relief of the NICS determination pursuant to Public Law 103-159.

**91.7(3)** The outcome of proceedings conducted under subrule 91.7(2) shall be binding on the commissioner.

**661—91.8(724) Reports and remittance to the state.**

**91.8(1)** Each sheriff shall remit to the commissioner, by the seventh working day of the month that follows the month in which one or more permits to carry a weapon were issued, information about such permits, including the permit holder's name, date of birth, NICS transaction number, type of permit issued and the portion of the fee to be remitted to the department as required by the Iowa Code. The reporting of issued permits to carry a weapon shall be in a format designated for that purpose.

**91.8(2)** Fees for each reporting period shall be remitted by the sheriff and shall be in the form of a check made payable to Iowa Department of Public Safety.

**661—91.9(724) Offensive weapons as collector's items—method of classification.** An offensive weapon, other than a machine gun, shall be classified by the commissioner as a collector's item when the firearm is so defined as a curio or relic in 27 CFR 478.11 as published April 1, 2010, in the Code of Federal Regulations.

These rules are intended to implement Iowa Code chapter 724 as amended by 2010 Iowa Acts, Senate File 2357 and Senate File 2379.

**ARC 9098B****PUBLIC SAFETY DEPARTMENT[661]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1) "b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 101.1, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 226, "Liquefied Petroleum Gas," Iowa Administrative Code.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Iowa Code section 101.1 authorizes and directs the Fire Marshal to establish requirements for the safe transportation, storage, handling, and use of liquefied petroleum gases. Iowa Code section 101.3 requires that the rules established for liquefied petroleum gas be “separately formulated and separately promulgated” from rules establishing requirements for transportation, storage, handling, and use of flammable and combustible liquids.

Rules for the safe transportation, storage, handling and use of liquefied petroleum gas are found in Chapter 226 of the administrative rules of the Department of Public Safety. The amendments proposed herein update references to current editions of nationally accepted codes and standards and clarify other requirements.

The amendments proposed herein are based upon the use of provisions of the International Fire Code, with amendments, as safety requirements related to liquefied petroleum gas. This is consistent with Fire Marshal rules establishing general fire safety requirements.

A public hearing on these proposed amendments will be held on October 13, 2010, at 9:30 a.m. in the First Floor Public Conference Room, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views concerning these amendments at the public hearing orally or in writing.

Any interested persons may make written comments concerning these proposed amendments to the Agency Rules Administrator by mail to Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319; E-mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us); or fax to (515)725-6195 by 4:30 p.m. on October 12, 2010. While comments are welcome on any provision of these proposed amendments, the Fire Marshal specifically solicits comments on the subject of restricting the use of rail cars for storage of propane and the use of this method of storage on farms. The Fire Marshal is interested in hearing comments on whether an exception should be made to the general restrictions on storage of propane in rail cars (proposed rule 661—226.7(101)) to allow such storage on farms and how such an exception could be formulated to maintain the safety of the public and those working and living on farms where storage of propane in rail cars occurs.

These amendments are intended to implement Iowa Code chapter 101.

The following amendments are proposed.

Amend **661—Chapter 226** as follows:

CHAPTER 226  
LIQUEFIED PETROLEUM GAS

**661—226.1(101) General requirements.** The provisions of the International Fire Code, Chapter 38, 2006 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, and all references contained therein, are hereby adopted by reference as the general requirements for transportation, storage, handling, and use of liquefied petroleum gas, with the following amendments:

Delete section 3801.1 and insert in lieu thereof the following new section:

**3801.1** Scope. Storage, handling and transportation of liquefied petroleum gas (LP-gas) and the installation of LP-gas equipment pertinent to systems for such uses shall comply with this chapter, NFPA 54, ANSI Z223.1-2006 2009 National Fuel Gas Code, 2006 2009 edition, and NFPA 58, Liquefied Petroleum Gas Code, 2004 2008 edition, with the following amendments:

Amend NFPA 54, ANSI Z223.1-2006 2009 National Fuel Gas Code, 2006 2009 edition, as follows:

Delete section 7.3.5.2 and insert in lieu thereof the following new section:

**7.3.5.2** Gas piping underground, outside a building, shall not be in physical contact with any concrete. Where it is necessary to install piping that will extend through or under an exterior concrete slab for connection to a regulator or other part of the system, before entering a building, the gas piping shall be sleeved. The sleeve shall extend through the concrete and be sealed only at the end extending above grade to prevent the entrance of insects, debris, or moisture. All piping, fittings, and risers shall be

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

protected against corrosion in accordance with NFPA 54, National Fuel Gas Code, 2004 edition, section 5.6.6.

Delete section 8.2.1 and insert in lieu thereof the following new section:

**8.2.1** Leak checks using fuel gas (propane vapor) shall be permitted in piping systems that have been pressure-tested in accordance with 661—subrule 226.5(1).

Amend NFPA 58, Liquefied Petroleum Gas Code, ~~2004~~ 2008 edition, as follows:

Properties of LP-gases shall be determined in accordance with Annex B of NFPA 58.

Delete section 5.2.3.1 and insert in lieu thereof the following new section:

**5.2.3.1** DOT cylinders in stationary service that are filled on site and therefore are not under the jurisdiction of DOT shall be either requalified in accordance with DOT requirements or visually inspected within 12 years of the date of manufacture and every 5 years thereafter, in accordance with 5.2.3.1(A) through 5.2.3.1(C). The effective date for qualification and requalification requirements of this section shall be July 1, 2010.

(A) Any cylinder that fails one or more of the criteria in 5.2.3.1(C) shall not be refilled or continued in service until the condition is corrected.

(B) Personnel shall be trained and qualified to perform inspections. Initial and refresher training shall be in accordance with rule 661—226.4(101).

(C) Visual inspection shall be performed in accordance with the following:

(1) The cylinder is checked for exposure to fire, dents, cuts, digs, gouges, and corrosion according to CGA C-6-2005, Standards for Visual Inspection of Steel Compressed Gas Cylinders, ninth edition, except that paragraph 5.2.1.1(1) of that standard (which requires tare weight verification) shall not be part of the required inspection criteria.

(2) The cylinder protective collar (where utilized) and the foot ring are intact and are firmly attached.

(3) The cylinder is painted or coated to retard corrosion.

(4) The cylinder pressure relief valve indicates no visible damage, corrosion of operating components, or obstructions.

(5) There is no leakage from the cylinder or its appurtenances that is detectable without the use of instruments.

(6) The cylinder is installed on a firm foundation and is not in contact with the soil.

(7) A cylinder that passes the visual examination shall be marked with the month and year of the examination followed by the letter “E” (for example, 10-01E, indicating requalification in October 2001 by the external inspection method) and the requalifier identification number (RIN) in accordance with the requalifying agency’s permit issued by the United States Department of Transportation.

(8) The results of the visual inspection shall be documented, and a record of the inspection shall be retained for a 5-year period or until the cylinder is again requalified, whichever occurs first.

Delete section 6.6.7.1 and insert in lieu thereof the following:

**6.6.7.1** Installation of permanent, stationary containers on roofs of buildings shall be prohibited.

Delete section 6.6.7.2.

Delete section 6.9.3.14 and insert in lieu thereof the following new section:

**6.9.3.14** Underground metallic piping shall be protected against corrosion as warranted by soil conditions (see section 6.16). Underground gas piping that is outside a building shall not be in physical contact with any concrete.

Delete sections ~~6.12, 6.12.1, 6.12.2, and 6.12.3~~ 6.14, 6.14.1, 6.14.2, and 6.14.3.

NOTE: Properties of LP-gases shall be determined in accordance with Appendix B of NFPA 58.

Delete paragraph 6.17.1.2(C) and insert in lieu thereof the following new paragraph:

**6.17.1.2(C)** Cylinders installed permanently on roofs of buildings shall be prohibited.

Delete section 6.17.11.1, including paragraphs (A) through (F), and insert in lieu thereof the following new section:

**6.17.11.1** Cylinders installed permanently on roofs of buildings shall be prohibited.

Delete section 6.17.11.2.

Delete paragraph 6.19.1.2(C) and insert in lieu thereof the following new paragraph:

**6.19.1.2(C)** Cylinders installed permanently on roofs of buildings shall be prohibited.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Delete section 6.19.11.1, including paragraphs (A) through (F), and insert in lieu thereof the following new section:

**6.19.11.1** Cylinders installed permanently on roofs of buildings shall be prohibited.

Delete section 6.19.11.2.

Delete section 7.2.1.1 and insert in lieu thereof the following new section:

**7.2.1.1** Transfer operations shall be conducted by qualified personnel meeting the provisions of rule 661—226.4(101).

Delete section 11.2 and insert in lieu thereof the following new section:

**11.2** Each person engaged in installing, repairing, filling, or otherwise servicing an LP-gas engine fuel system shall be trained in accordance with rule 661—226.4(101) and trained under the applicable installation and maintenance procedures established by the manufacturer.

Delete section 3801.2.

Delete section 3801.3 and insert in lieu thereof the following new section:

**3801.3** Construction documents. Where a single container is more than 2,000 gallons (7,570 L) in water capacity or the aggregate capacity of containers is more than 4,000 gallons (15,140 L) in water capacity, the installer shall submit construction documents for such installation to the fire marshal for review and approval. Installation shall not commence until written approval from the fire marshal has been received.

Delete section 3803.1 and insert in lieu thereof the following new section:

**3803.1** General. LP-gas equipment shall be installed in accordance with NFPA 54, ANSI Z223.1-~~2006~~ 2009 National Fuel Gas Code, ~~2006~~ 2009 edition, and NFPA 58, Liquefied Petroleum Gas Code, ~~2004~~ 2008 edition, except as otherwise provided in this chapter.

Delete section 3803.2.1.7 and insert in lieu thereof the following new section:

**3803.2.1.7** Use for food preparation. Where approved, listed LP-gas commercial food service appliances are allowed to be used for food preparation within restaurants and in attended commercial food-catering operations in accordance with NFPA 54, ANSI Z223.1-~~2006~~ 2009 National Fuel Gas Code, ~~2006~~ 2009 edition, the International Mechanical Code, ~~2006~~ 2009 edition, and NFPA 58, Liquefied Petroleum Gas Code, ~~2004~~ 2008 edition.

~~NOTE: The following are deletions from the adoption of the International Fire Code, 2006 edition.~~

Delete section 3803.3 and insert in lieu thereof the following new section:

**3803.3** Location of equipment and piping. Equipment and piping shall not be installed in locations where such equipment and piping are prohibited by NFPA 54, ANSI Z223.1-~~2006~~ 2009 National Fuel Gas Code, ~~2006~~ 2009 edition.

Delete section 3805.1 and insert in lieu thereof the following new section:

**3805.1** Nonapproved equipment. LP-gas shall not be used for the purpose of operating devices or equipment unless such device or equipment is approved for use with LP-gas in accordance with NFPA 58, Liquefied Petroleum Gas Code, ~~2004~~ 2008 edition, sections 1.5 through 1.5.3.

Delete section 3806.1 and insert in lieu thereof the following new section:

**3806.1** Attendants. Transfer operations shall be conducted by qualified personnel meeting the provisions of rule 661—226.4(101).

Amend sections ~~308.3.1.1~~, 3803.2.1.6, 3809.3, and 3809.9, exception 3 to section 308.1.4, and the exception to section 3809.7 by deleting the phrase “a maximum water capacity of 2.5 gallons 2½ pounds” and inserting in lieu thereof the phrase “a maximum water capacity of 2.7 gallons pounds.”

**661—226.2(101)** No change.

**661—226.3(101)** No change.

**661—226.4(101) Qualifications of personnel.**

**226.4(1)** Persons who transfer liquefied petroleum gas, who are employed to transport liquefied petroleum gas, or whose primary duties fall within the scope of this chapter shall be trained in proper handling procedures.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

*a.* Training shall include both initial training and refresher training.

(1) Initial training shall include participation in a training program and shall include both a written qualification assessment (closed-book test) and a skills assessment, based on the objectives set forth in the recognized training program and the requirements of NFPA 54 National Fuel Gas Code, ~~2006~~ 2009 edition, NFPA 58 Liquefied Petroleum Gas Code, ~~2004~~ 2008 edition, and any applicable requirements established in this chapter.

(2) Refresher training shall include both a written qualification assessment (closed-book test) and a hands-on skills assessment based on requirements of NFPA 54 National Fuel Gas Code, ~~2006~~ 2009 edition, NFPA 58 Liquefied Petroleum Gas Code, ~~2004~~ 2008 edition, and any applicable requirements established in this chapter.

(3) The written qualification assessment shall be proctored through the training agency providing the refresher training or another qualified party.

(4) The hands-on skills assessment shall be completed by the training agency or another qualified party and shall include a verification of completion that shall be signed by the individual completing the required skills and the skills evaluator.

(5) Refresher training shall be provided at least every three years.

*b.* All training shall be documented. Documentation shall be maintained by the current employer of the person receiving the training.

**226.4(2)** Persons who install, service, test, or maintain propane gas utilization equipment, or gas piping systems of which the equipment is a part, or accessories shall be trained in the proper procedures in accordance with applicable codes.

*a.* Initial training shall include participation in a training program and shall include both a written qualification assessment (closed-book test) and a skills assessment, based on the objectives set forth in the recognized training program and the requirements of NFPA 54 National Fuel Gas Code, ~~2006~~ 2009 edition, NFPA 58 Liquefied Petroleum Gas Code, ~~2004~~ 2008 edition, and this chapter.

*b.* Refresher training shall include both a written qualification assessment (closed-book test) and a hands-on skills assessment based on requirements of NFPA 54 National Fuel Gas Code, ~~2006~~ 2009 edition, NFPA 58 Liquefied Petroleum Gas Code, ~~2004~~ 2008 edition, and this chapter.

*c.* The written qualification assessment shall be proctored through the training agency providing the refresher training or another qualified party.

*d.* The hands-on skills assessment shall be completed by the training agency or another qualified party and shall include a verification of completion that shall be signed by the individual completing the required skills and the skills evaluator.

*e.* Refresher training shall be provided at least every three years.

*f.* All training shall be documented. Documentation shall be maintained by the current employer of the person receiving the training.

**226.4(3)** No change.

**661—226.5(101) Pressure testing.**

**226.5(1)** Pressure testing required. After assembly and after any modification or repair, metallic LP-gas piping and hose shall be pressure-tested as follows:

*a.* No change.

*b.* Piping systems having operating pressures of 20 psig or less, all polyethylene and polyamide piping, and piping to which NFPA 54 National Fuel Gas Code, ~~2006~~ 2009 edition, is applicable, shall be tested in accordance with that code.

~~**226.5(2)** Testing for leakage. All LP-gas piping systems having operating pressures of 20 psig or less and all polyethylene and polyamide piping shall have system and equipment leakage tests performed in accordance with this chapter and Section 8.2 NFPA 54 National Fuel Gas Code, 2006 edition.~~

**226.5(2)** Testing for leakage. Immediately after the gas is turned on into a new system or into a system that has been initially restored after an interruption of service, the piping system shall be checked for leakage in accordance with this chapter and Section 8.2 of NFPA 54, National Fuel Gas Code, 2009

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

edition. Where leakage is indicated, the gas supply shall be shut off until the necessary repairs have been made.

a. All LP-gas piping systems that have operating pressures of 20 psig or less and all polyethylene and polyamide piping shall have system and equipment leakage tests performed in accordance with this chapter and Section 8.2 of NFPA 54, National Fuel Gas Code, 2009 edition.

b. Piping systems that serve industrial occupancies with LP-gas vapor pressures between 20 psig and 50 psig shall be tested in accordance with the requirements of the authority having jurisdiction.

c. All LP-gas liquid piping systems and vapor piping systems operating at pressures greater than 20 psig shall be tested for leakage in accordance with this chapter as follows:

(1) Propane liquid shall not be used.

(2) Propane vapor may be utilized.

(3) Methods utilized to perform leak tests may be measurement of flow, measurement of sustained pressure for a period of time sufficient to disclose any leaks, or other procedures adequate to verify the system is gas-tight.

**226.5(3) and 226.5(4) No change.**

**661—226.6(101) No change.**

**661—226.7(101) Use of railroad tank cars in stationary service.** The use of railroad tank cars in stationary propane service shall be prohibited.

EXCEPTION: Existing installations for which prior approval is documented in writing shall be permitted to remain in service.

**661—226.8(101) Installation and use of DOT specification MC330 or MC331 cargo tanks in stationary service.** The installation and use of DOT specification MC330 or MC331 cargo tanks in stationary service shall be in accordance with NFPA 58, 2008 edition, and this chapter.

**226.8(1)** Containers shall be repaired or altered to prevent moisture or water from collecting in any container well. Repairs or alterations to pressure vessels must meet the requirements of the National Board Inspection Code (NBIC) [5] and must be performed by a repair organization accredited by the NBIC and authorized to utilize the “R” code symbol stamp.

**226.8(2)** Following a repair or alteration and final inspection by a National Board-commissioned inspector, the repair organization will affix a “Repair” nameplate to the pressure vessel which is similar to the ASME nameplate.

**226.8(3)** Alternate methods for preventing moisture or water from collecting in any container well may be considered in accordance with the equivalency requirements set forth in NFPA 58, 2008 edition, Section 1.5, Equivalency.

These rules are intended to implement Iowa Code chapter 101.

**ARC 9099B**

**PUBLIC SAFETY DEPARTMENT[661]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 103.6, the Electrical Examining Board hereby gives Notice of Intended Action to amend Chapter 500, “Electrician and Electrical Contractor Licensing

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Program—Organization and Administration,” and Chapter 502, “Electrician and Electrical Contractor Licensing Program—Licensing Requirements, Procedures, and Fees,” Iowa Administrative Code.

The Electrical Examining Board is authorized to adopt administrative rules governing all aspects of licensure for electricians and electrical contractors and of the state electrical inspection program. The proposed amendments update the rules and establish separate license categories for residential electricians, residential master electricians, and residential electrical contractors.

A public hearing on these proposed amendments will be held on October 21, 2010, at 10 a.m. in the First Floor Public Conference Room (Room 125) of the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail to Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) by 4:30 p.m. on October 15, 2010.

Rules of the Electrical Examining Board are generally subject to waiver under the provisions of rule 661—501.5(17A).

These amendments are intended to implement Iowa Code chapter 103.

The following amendments are proposed.

ITEM 1. Amend rule **661—500.2(103)**, definition of “Residential electrical work,” as follows:

*“Residential electrical work” means electrical work in a residence in which there are no more than four living units within the same building and includes work to connect and work within accessory structures, which are structures no greater than 3,000 square feet in floor area, not more than two stories in height, the use of which is incidental to the use of the dwelling unit or units, and located on the same lot as the dwelling unit or units.*

ITEM 2. Amend rule 661—502.1(103) as follows:

**661—502.1(103) License categories and licenses required.**

**502.1(1)** The following license categories of license are established:

- a. Electrical contractor.
- b. Residential electrical contractor.
- c. Master electrician, class A.
- ~~e.~~ d. Master electrician, class B.
- ~~e.~~ Residential master electrician.
- ~~d.~~ f. Journeyman electrician, class A.
- ~~e.~~ g. Journeyman electrician, class B.
- ~~h.~~ Residential electrician.
- ~~f.~~ i. Apprentice electrician.
- ~~g.~~ j. Special electrician.
- ~~h.~~ k. Unclassified person.
- ~~i.~~ l. Inactive master electrician.

**502.1(2)** A person who holds any class of license issued by the board, other than a class B license, a residential electrical contractor license, a residential master electrician license, or a residential electrician license, may perform the work authorized by that license anywhere within the state of Iowa. A person who holds a special electrician license may perform the work which is authorized by that license endorsement. A person who holds a class B license may perform the work authorized by that license except in a political subdivision which, by local ordinance, has, pursuant to Iowa Code section 103.29, subsection 4, ~~as amended by 2009 Iowa Acts, Senate File 159,~~ restricted or barred such work by a person who holds a class B license. A person who holds a residential electrical contractor license, a residential master electrician license, or a residential electrician license may perform the work authorized by that license anywhere within the state of Iowa except within a political subdivision which has, by local ordinance, restricted the use of such a license.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

**502.1(3)** No change.

ITEM 3. Amend rule 661—502.2(103) as follows:

**661—502.2(103) License requirements.**

**502.2(1)** No change.

**502.2(2)** A residential electrical contractor license may be issued to a person who is licensed as a class A master electrician, a class B master electrician, or a residential master electrician and who is registered with the state of Iowa as a contractor pursuant to Iowa Code chapter 91C.

~~502.2(3)~~ **502.2(3)** A class A master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

*a. to c.* No change.

~~502.2(3)~~ **502.2(4)** A class B master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), who presents credible evidence of having worked for a total of eight years (16,000 hours of cumulative experience) as a master electrician since 1989, and whose experience as a master electrician began on or before December 31, 1989.

**502.2(5)** A residential master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

*a.* Holds a current residential electrician or journeyman electrician license, has 2,000 hours of verified experience as a residential electrician or a journeyman electrician, and has passed a residential master electrician examination approved by the board; or

*b.* Holds a current special electrician license with a residential endorsement, has 4,000 hours of verified experience, and has passed a residential master electrician examination approved by the board.

~~502.2(4)~~ **502.2(6)** A class A journeyman electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

*a. to c.* No change.

~~502.2(5)~~ **502.2(7)** A class B journeyman electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), who presents credible evidence of having worked for a total of eight years (16,000 hours of cumulative experience) as a journeyman electrician or master electrician since 1989, and whose experience as a journeyman electrician or master electrician began on or before December 31, 1990.

**502.2(8)** A residential electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

*a.* Holds a current residential special electrician license and has held that license for a minimum of one year and has passed a residential electrician examination approved by the board; or

*b.* Has completed 6,000 hours of experience as an apprentice electrician and has passed a residential electrician examination approved by the board. An applicant may take the examination required by this paragraph after completing 5,000 hours of experience as an apprentice electrician, although the license will not be issued until the applicant has completed 6,000 hours of such experience; or

*c.* Has completed 4,000 hours of experience working under the direct supervision of a residential master electrician, a residential electrician, a master electrician, or a journeyman electrician; has successfully completed a minimum of one academic year of electrical trade school; and has passed a residential electrician examination approved by the board; or

*d.* Has completed 8,000 hours of verified experience as a licensed unclassified person and at least 2,000 hours of verified work experience in residential wiring and has passed a residential electrician examination approved by the board; or

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

e. Has successfully completed a residential electrician apprenticeship program approved by the United States Department of Labor and passed a residential electrician examination approved by the board.

~~502.2(6)~~ **502.2(9)** A special electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets the qualifications for any endorsement entered on the license. Each special electrician license shall carry one or more endorsements as specified in paragraphs “a” through “d.”

a. to c. No change.

d. Endorsement 4, “Residential Electrician,” shall be included on a special electrician license if the licensee requests it and has passed a supervised written examination approved by the board or has completed four years of documented experience performing residential electrical work. A political subdivision may, by enactment of an ordinance filed with the board prior to its effective date, require that a special electrician performing work authorized by this endorsement be supervised by a master electrician. Special electrician licenses with “residential electrician” endorsements shall not be issued after December 31, 2010. Renewals of special electrician licenses with “residential electrician” endorsements shall not be issued after December 31, 2013.

~~502.2(7)~~ **502.2(10)** An apprentice electrician license may be issued to a person who submits a completed application to the board with the applicable fee, who is not disqualified pursuant to rule 661—502.4(103), and who is participating in an apprenticeship training program that is registered with the Bureau of Apprenticeship and Training of the United States Department of Labor. A person may hold an apprentice electrician license for no more than six years from the original date on which an apprentice electrician license is granted, except that a person may apply to the board for an exception to this limitation based upon a documented hardship. “Documented hardship” includes, but is not limited to, an interruption in service as an apprentice electrician for active military duty or for an extended illness.

~~502.2(8)~~ **502.2(11)** A license as an unclassified person may be issued to a person who submits a completed application to the board with the applicable fee, who is not disqualified pursuant to rule 661—502.4(103), and who is employed by a licensed electrical contractor.

~~502.2(9)~~ **502.2(12)** In lieu of renewal of the active master electrician license, an inactive master electrician license may be issued to a holder of a master electrician license whose license is due for renewal and who requests placement in inactive status. A holder of an inactive license shall maintain all requirements which would apply for an active master electrician license, except for payment of the fee required for an active license, during the term of the inactive license. If the license holder fails to meet any such requirement during the term of the inactive license, the license holder shall not be entitled to reinstatement of an active license. If the license holder continues to meet all such requirements while holding an inactive license, the license holder may obtain an active master electrician license by surrendering the inactive master electrician license, filing an application for reinstatement, and paying the applicable license fee. The holder of an inactive license who seeks reinstatement of an active license shall not receive any refund of the fee paid for the inactive license. A person who holds an inactive license may not perform work which requires the person to be a holder of that license; but may perform work authorized by any active license issued by the board which the person holds.

**502.2(13)** Retaking an examination. If passage of an examination is a requirement for issuance of a license:

a. An applicant who has taken the examination for a license twice and has failed the examination twice shall wait six months before taking the examination again and shall complete 12 hours of continuing education approved by the board on subjects related to the standards specified in 661—Chapter 504. After satisfying the requirements of this paragraph, the applicant may take the examination two additional times, or a maximum of four times.

b. An applicant who has satisfied the conditions of paragraph “a” and who has taken the examination two additional times, or a total of four times, and has failed the examination four times shall wait an additional six months and shall complete an additional 12 hours of continuing education

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

approved by the board on subjects related to the standards specified in 661—Chapter 504 before taking the examination again. After satisfying the requirements of this paragraph, the applicant may take the examination two additional times, or a maximum of six times.

c. An applicant who has satisfied the conditions of paragraph “b” and who has taken the examination two additional times, or a total of six times, and has failed the examination six times shall not be permitted to take the examination an additional time unless approved to do so by the board. An applicant who wishes to take an examination after failing it six times shall wait six months and then may petition the board to allow the applicant to take the examination an additional time. The applicant may be required to appear personally before the board when the board is considering the petition.

ITEM 4. Amend rule 661—502.3(103) as follows:

**661—502.3(103) License terms and fees.** The following table sets out the length of term of each license and the fee for the license.

License Type	Term	Fee
Electrical Contractor	3 years	\$375
<u>Residential Electrical Contractor</u>	<u>3 years</u>	<u>\$375</u>
Master Electrician, Class A	3 years	\$375
Master Electrician, Class B	3 years	\$375
<u>Residential Master Electrician</u>	<u>3 years</u>	<u>\$375</u>
Journeyman Electrician, Class A	3 years	\$75
Journeyman Electrician, Class B	3 years	\$75
<u>Residential Electrician</u>	<u>3 years</u>	<u>\$75</u>
Special Electrician	3 years	\$75
Apprentice Electrician	1 year	\$20
Unclassified Person	1 year	\$20
Inactive Master Electrician	3 years	\$75

**502.3(1)** Fees are payable in advance with the application, by check or warrant to the Department of Public Safety. The memo area of the check should read “Electrician Licensing License Fees.”

**502.3(2)** Notice of renewal shall be provided to each licensee no less than 30 days prior to the expiration of the current license.

**502.3(3)** If a license is issued for less than the period of time specified in the table above, the fee shall be prorated according to the number of months for which the license is issued.

**502.3(4)** A licensee may obtain a replacement license for a license that has been lost. To order a replacement license, the licensee shall notify the board office in writing that the license has been lost and shall provide any information required by the board office, which may include, but is not limited to, the license number, the name of the licensee, and a description of the circumstances of the loss, if known. The fee for issuance of a replacement license shall be \$15.

EXCEPTION: If a licensee who is located in an area covered by a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6 which is currently in force or has been in force within the previous 90 days certifies to the board that the license was lost as a direct result of conditions which relate to the issuance of the disaster emergency proclamation, the fee for replacement of the license shall be waived.

### TREASURER OF STATE

#### Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for September is 5.00%.

#### INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants .....	Maximum 6.0%
74A.4 Special Assessments .....	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective September 9, 2010, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

#### TIME DEPOSITS

7-31 days .....	Minimum .05%
32-89 days .....	Minimum .05%
90-179 days .....	Minimum .05%
180-364 days .....	Minimum .10%
One year to 397 days .....	Minimum .35%
More than 397 days .....	Minimum .75%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

**ARC 9102B****AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 164.1(1), the Department of Agriculture and Land Stewardship amends Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

The amendments update the list of reportable infectious and contagious animal diseases and the fee schedule paid to veterinarians under this chapter.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 8976B** on July 28, 2010. No written comments were received from the public. One change was made to the Notice. The name of the international office was corrected to read "Office International Des Epizooties."

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective September 1, 2010. The amendments confer a benefit on the public by promoting and protecting animal health.

These amendments are intended to implement Iowa Code sections 163.1, 163.2, and 164.6.

These amendments became effective September 1, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [64.1, 64.30, 64.52, 64.55(1), 64.64, 64.71, 64.81, 64.101, 64.134] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8976B**, IAB 7/28/10.

[Filed Emergency After Notice 9/1/10, effective 9/1/10]

[Published 9/22/10]

[For replacement pages for IAC, see IAC Supplement 9/22/10.]

**ARC 9081B****CULTURAL AFFAIRS DEPARTMENT[221]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 303.1A(6) as amended by 2010 Iowa Acts, Senate File 2237, and chapter 303A, the Director of the Department of Cultural Affairs hereby amends Chapter 13, "Iowa Cultural Trust," Iowa Administrative Code.

The amendment to Chapter 13 corrects an error that unnecessarily restricted access by Iowa organizations to grant funds available through the Iowa cultural trust.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary as the amendment removes restrictions and confers a benefit to constituents.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and this amendment should be made effective on September 1, 2010, as it confers a benefit on and removes restrictions from the constituents interested in applying for grant funds to stabilize and sustain Iowa cultural organizations.

The Department adopted this amendment on August 24, 2010.

This amendment became effective on September 1, 2010.

This amendment is intended to implement Iowa Code section 303.1A(6) as amended by 2010 Iowa Acts, Senate File 2237, and section 303A.7.

The following amendment is adopted.

## CULTURAL AFFAIRS DEPARTMENT[221](cont'd)

Amend subrule 13.5(1) as follows:

**13.5(1) Grant program eligibility.** Applicants may include any arts, cultural, or historical organization that is either an Iowa organization that is federally tax-exempt under United States Internal Revenue Code Section 501(c)(3) and incorporated under the Iowa nonprofit corporation Act or an Iowa organization that operates as an arts, cultural, or historical department or division of a municipal or county government ~~that is also federally tax-exempt under Section 501(c)(3) and incorporated in Iowa under the Iowa nonprofit corporation Act~~ (does not include public libraries, parks, or recreation departments). Additional eligibility criteria are as listed in published guidelines for individual grant programs.

[Filed Emergency 8/24/10, effective 9/1/10]

[Published 9/22/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/22/10.

**ARC 9083B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 514I.5, the Department of Human Services amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

These amendments provide for a one-month grace period for each monthly premium owed for a HAWK-I enrollee. This change is being made to comply with the Children's Health Insurance Program Reauthorization Act (CHIPRA), Public Law 111-03. The Centers for Medicare and Medicaid Services (CMS) has clarified that the grace period shall be the month for which the premium is owed.

This policy may result in the furnishing of coverage even though the family has not paid the premium, creating an unpaid premium balance. Previously, the premium for a month of HAWK-I coverage was due to the Department on the tenth day of the month before the coverage month. If the payment was not received by the due date, the enrollment was canceled and coverage was not provided for the following month.

Under these amendments, families will receive a notice of the intended disenrollment if the premium is not received by the due date, but the effective date of disenrollment will be the last day of the coverage month, not the month when the premium was due. If the premium payment is received after the timely notice is issued but before the last calendar day of the coverage month, the child's coverage will be reinstated. If the premium is not received postmarked on or before the last calendar day of the coverage month, the child will be disenrolled effective with the last day of the coverage month.

If the premium payment is not received and the child is disenrolled, an obligation for the unpaid premium will be established for the parent, for the responsible person who applied on behalf of the child, or for the child when the child applies as a child living independently from the parents. The obligation will remain in effect for 24 months. If the person owing an unpaid premium reapplies and a child for whom the person is applying establishes HAWK-I eligibility for any month in the 24-month period, the unpaid premium must be paid before the child will be enrolled in a health or dental plan.

The amendments also make the following changes:

- Allow averaging of self-employment income records for two or three years if that is more representative of anticipated earnings than the records from the previous year alone.
- Provide that a new application form is not required when a child moves between the supplemental dental-only program and full medical and dental coverage.
- Move the due date for HAWK-I premiums from the tenth calendar day of the month to the fifth calendar day of the month before the month of coverage.
- Clarify that when a child is losing health insurance, the earliest start date of a HAWK-I enrollment period shall be the first day of the month following the month in which the health insurance

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ends if that date is later than the first day of the month following the month in which the application was received (the normal effective date).

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 16, 2010, as **ARC 8840B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The HAWK-I Board adopted these amendments on August 16, 2010.

The Department finds that these amendments confer a benefit on HAWK-I enrollees who are late paying premiums by giving them a grace period to submit the payment before benefits are canceled. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code chapter 514I.

These amendments became effective on September 1, 2010.

The following amendments are adopted.

ITEM 1. Amend subparagraph **86.2(2)“c”(3)** as follows:

(3) Self-employment income shall be verified using business records or income tax returns from the previous year if they are representative of anticipated earnings. If business records or tax returns from the previous year are not representative of anticipated earnings, an average of the business records or tax returns from the previous two or three years may be used if that average is representative of anticipated earnings.

ITEM 2. Adopt the following **new** paragraph **86.3(6)“c”**:

c. A new application shall not be required when a child moves between supplemental dental-only coverage as specified in rule 441—86.20(514I) and full medical and dental coverage.

ITEM 3. Amend subrule 86.5(1), introductory paragraph, as follows:

**86.5(1) Initial application.** Coverage for ~~children~~ a child who ~~are~~ is determined eligible for the HAWK-I program on the basis of an initial application for either HAWK-I or Medicaid shall be effective the first day of the month following the month in which the application is filed, regardless of the day of the month the application is filed, or when a plan becomes available in the applicant's county of residence. However, when the child does not meet the provisions of paragraph 86.2(4)“a,” coverage shall be effective the first day of the month following the month in which health insurance coverage is lost. Also, a one-month waiting period shall be imposed for a child who is subject to a monthly premium pursuant to paragraph 86.8(2)“c” when the child's health insurance coverage ended in the month of application. EXCEPTIONS: A waiting period shall not be imposed if any of the following conditions apply:

ITEM 4. Amend subrule 86.7(3) as follows:

**86.7(3) Nonpayment of premiums.** The child shall be canceled from the program as of the first day of the month in which premiums are not paid in accordance with the provisions of subrules 86.8(3), 86.8(4) and 86.8(5).

ITEM 5. Amend subrules 86.8(3) to 86.8(6) as follows:

**86.8(3) Due date.**

a. *Payment upon initial application.* “Initial application” means the first program application or a subsequent application that is not a renewal. Upon approval of an initial application, the first month for which a premium is due is the third month following the month of decision. The due date of the first premium shall be the ~~tenth~~ fifth day of the second month following the month of decision.

b. *Payment upon renewal.* “Renewal” means any application used to establish ongoing eligibility, without a break in coverage, for any enrollment period subsequent to an enrollment period established by an initial application.

(1) Upon approval of a renewal, the first month for which a premium is due is the first month of the enrollment period. The premium for the first month of the enrollment period shall be due by the

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~tenth~~ fifth day of the month before the month of coverage or the tenth business day following the date of decision, whichever is later.

(2) All premiums due must be paid before the child will be enrolled for coverage. When the premium is received, the third-party administrator shall notify the health and dental plans of the enrollment.

*c. Subsequent payments.* All subsequent premiums are due by the ~~tenth~~ fifth day of each month for the next month's coverage and must be postmarked no later than the last day of the month before the month of coverage. ~~Failure to pay the premium by the last day of the month before the month of coverage shall result in cancellation from the program.~~ Premiums may be paid in advance (e.g., on a quarterly or semiannual basis) rather than a monthly basis.

*d. Holiday or weekend.* When the premium due date falls on a holiday or weekend, the premium shall be due on the first business day following the due date.

~~**86.8(4) Reinstatement Grace period.** A child may be reinstated once per enrollment period when the family fails to pay the premium by the last day of the month for the next month's coverage. A grace period shall be allowed on any monthly premium not received as prescribed in paragraph 86.8(3) "c." The grace period shall be the coverage month for which the premium is due.~~

*a.* Failure to submit a premium by the last calendar day of the grace period shall result in disenrollment.

*b.* If the premium is subsequently received, coverage will be reinstated if the premium was postmarked or otherwise paid ~~in the calendar month immediately following disenrollment.~~

(1) In the grace period, or

(2) In the 14 calendar days following the grace period.

~~**86.8(5) Method of premium payment.** Premiums may be submitted in the form of cash, personal checks, automatic bank account withdrawals~~ electronic funds transfers (EFT), or other methods established by the third-party administrator.

~~**86.8(6) Failure to pay premium.** Failure to pay the premium in accordance with subrules 86.8(3) and 86.8(5) shall result in cancellation from the program unless the reinstatement grace period provisions of subrule 86.8(4) apply. Once a child is canceled from the program due to nonpayment of premiums, the family must reapply for coverage.~~

ITEM 6. Adopt the following **new** subrule 86.8(8):

~~**86.8(8) Unpaid premiums.** Before the child can regain coverage under the program, unpaid premiums owed for coverage received in accordance with subrule 86.8(4) within the past 24 months must be paid in full.~~

*a.* Failure to pay the unpaid premiums shall result in denial of the application. EXCEPTION: The unpaid premium obligation shall be reduced to zero if upon reapplication a premium would not be assessed because the household's income is less than 150 percent of the federal poverty level.

*b.* If no reapplication is filed within 24 months of failing to pay a premium, the debt shall be expunged and shall no longer be owed.

ITEM 7. Adopt the following **new** paragraph ~~86.20(3)"f"~~:

*f.* The provisions of subrules 86.8(3) to 86.8(6) and 86.8(8) apply to premiums specified in this subrule.

[Filed Emergency After Notice 8/24/10, effective 9/1/10]

[Published 9/22/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/22/10.

**ARC 9084B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 514I.5, the Department of Human Services amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

These amendments extend the period within which a new enrollee may request to switch from one HAWK-I health or dental plan to another. The amendments extend this period from the current 30 days following the date the health or dental plan was notified of the person's initial enrollment to 90 days following the date of that notification. The enrollee will be allowed to switch plans during this period regardless of the reason for requesting the change and regardless of whether the enrollee chose the plan or was referred to it.

The amendments also provide that an enrollee will be allowed to switch plans at any time for cause, as defined by federal regulations. "Cause" is defined to include moving out of the plan's service area, being unable to obtain needed services from the plan, poor quality of care, lack of access to covered services, and lack of access to providers experienced in treating the enrollee's health care needs. Previously an enrollee was allowed to change plans only when there was a substantial change in the plan's provider panel.

These changes are being made to comply with Public Law 111-03, the Children's Health Insurance Program Reauthorization Act (CHIPRA), which requires states to follow Medicaid managed care regulations in the administration of their Children's Health Insurance Plans.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 16, 2010, as **ARC 8841B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The HAWK-I Board adopted these amendments on August 16, 2010.

The Department finds that by extending or eliminating the time limits for making the request these amendments confer a benefit on HAWK-I enrollees who want to request a change of health plan. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code chapter 514I.

These amendments became effective on September 1, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 86.6(2) as follows:

**86.6(2) *Period of enrollment.*** Once enrolled in a health or dental plan, the child shall remain enrolled in the selected health or dental plan for a period of 12 months ~~unless:~~

~~*a. Exceptions.* There is a substantial change in the provider panel of the health or dental plan originally chosen, as determined by the board. A substantial change means, but is not limited to, loss of a contracted hospital or provider group. When there is another participating health or dental plan available in the child's county of residence, the child may disenroll from the current health or dental plan and enroll in the other health or dental plan. A child may be enrolled in a plan for less than 12 months if:~~

~~*b. (1)* The child is disenrolled in accordance with the provisions of rule 441—86.7(514I). If a child is disenrolled from the health or dental plan and subsequently reapplies before the end of the original 12-month enrollment period, the child shall be enrolled in the health or dental plan from which the child was originally disenrolled unless the provisions of subrule 86.7(1) apply.~~

~~*e. (2)* The child is added to an existing enrollment. When a family requests to add an eligible child, the child shall be enrolled for the months remaining in the current enrollment period.~~

~~*(3)* A request to change plans is accepted in accordance with paragraphs 86.6(2)"b" and "c."~~

~~*b. Request to change plan.* An enrollee may ask to change the health or dental plan:~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) Within 90 days following the date the initial enrollment was sent to the health or dental plan regardless of the reason for the plan change or whether the original health or dental plan was selected by the applicant or was assigned in accordance with subrule 86.6(3).

(2) At any time for cause. "Cause" as defined in 42 CFR 438.56(d)(2) as amended to May 13, 2010, includes, but is not limited to:

1. The enrollee moves out of the plan's service area.
2. Because of moral or religious objections, the plan does not cover the services the enrollee seeks.
3. The enrollee needs related services (for example, a cesarean section and a tubal ligation) to be performed at the same time, not all related services are available within the network, and the enrollee's primary care provider or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk.
4. Other reasons including but not limited to poor quality of care, lack of access to services covered under the contract, or lack of access to providers experienced in dealing with the enrollee's health care needs.

c. Response to request.

(1) If the enrollee has not requested to change health or dental plans within 90 days following the date the initial enrollment was sent to the health or dental plan and it is determined that cause does not exist, the request to change plans shall be denied.

(2) All approved changes shall be made prospectively and shall be effective on the first day of the month following the month in which the request was made.

ITEM 2. Rescind paragraphs **86.6(3)"a"** and **"b."**

[Filed Emergency After Notice 8/24/10, effective 9/1/10]

[Published 9/22/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/22/10.

**ARC 9091B**

## **PHARMACY BOARD[657]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 124.301, the Board of Pharmacy hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment rescinds current subrule 10.38(1). The amendment removes four synthetic cannabinoids from Schedule I of the Iowa Uniform Controlled Substances Act (CSA). These synthetic cannabinoids have been classified as imitation controlled substances, subject to the regulatory requirements of Iowa Code chapter 124A. Identifying these same substances as controlled substances, subject to the regulatory requirements of Iowa Code chapter 124, is confusing and unnecessary. There is no clear authority for the Board to schedule these synthetic cannabinoids as controlled substances by rule prior to enactment of similar control under federal law.

Waiver or variance of this subrule is not necessary because the subrule will no longer exist.

The amendment was approved during the July 22, 2010, meeting of the Board of Pharmacy.

The Board finds, pursuant to Iowa Code section 17A.4(3), that notice and public participation are unnecessary and impracticable. This amendment rescinds a subrule that the Board did not have clear authority to adopt and that is now in direct conflict with another rule.

The Board finds, pursuant to Iowa Code subsection 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on August 30, 2010. This amendment confers a benefit on the public by eliminating potential confusion resulting from the attempted control of these synthetic cannabinoids under two chapters of the Iowa Code.

This amendment became effective August 30, 2010.

This amendment is intended to implement Iowa Code section 124.201.

PHARMACY BOARD[657](cont'd)

The following amendment is adopted.

Rescind and reserve subrule **10.38(1)**.

[Filed Emergency 8/30/10, effective 8/30/10]

[Published 9/22/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/22/10.

**ARC 9097B****CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.108, the Iowa Department of Corrections hereby adopts amendments to Chapter 20, "Institutions Administration," Chapter 44, "Work Release," Chapter 45, "Parole," and Chapter 47, "OWI Programs," Iowa Administrative Code.

The purpose of the amendments to Chapter 20 is to provide offenders and their families and friends the option of communicating by electronic means. The purpose of the amendments to Chapters 44, 45, and 47 is to ensure that the Judicial District Department of Correctional Services administrative rules are consistent with policies/procedures governing medical care to work releasees, parolees, and OWI offenders. The amendments also include nonsubstantive technical updates related to offender time loss appeals to conform to the Iowa Code, notification to the Parole Board, and fees for OWI offenders.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 14, 2010, as **ARC 8926B**. A public hearing was held on August 3, 2010, from 11 a.m. to 1 p.m. in the conference room of the Department of Corrections. No one attended the public hearing, and no oral or written testimony was received. The adopted amendments are identical to those published under Notice of Intended Action.

These amendments were approved during the August 27, 2010, meeting of the Board of Corrections.

These amendments will become effective on October 27, 2010.

These amendments are intended to implement Iowa Code section 904.108.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [20.4, 44.1(2)"c," 45.1(6), 45.4(2), 47.3(4), 47.4(10)] is being omitted. These amendments are identical to those published under Notice as **ARC 8926B**, IAB 7/14/10.

[Filed 8/31/10, effective 10/27/10]

[Published 9/22/10]

[For replacement pages for IAC, see IAC Supplement 9/22/10.]

**ARC 9082B****LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby amends Chapter 80, "Boiler and Pressure Vessel Board Administrative and Regulatory Authority," Chapter 81, "Waivers or Variances from Administrative Rules by the Boiler and Pressure Vessel Board," Chapter 82, "Boiler and Pressure Vessel Board Petitions for Rule Making," Chapter 83, "Declaratory Orders by the Boiler and Pressure Vessel Board," Chapter 84, "Contested Cases Before the Boiler and Pressure Vessel Board," Chapter 85, "Public Records and Fair Information Practices of the Boiler and Pressure Vessel Board," and Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Iowa Administrative Code.

These amendments make editorial and technical changes; require that a petitioner use the appropriate Board form to petition for Board action; change the language concerning public comment during Board meetings; clarify procedures for informal review of inspection reports; require that all fluids be removed from a boiler prior to inspection; and clarify procedures for issuance of a subpoena during a contested case.

The purposes of these amendments are to protect the health and safety of the public, make the rules more clear, align the language with the authority of Iowa Code chapters 17A and 89, and implement legislative intent.

LABOR SERVICES DIVISION[875](cont'd)

Notice of Intended Action was published in the April 21, 2010, Iowa Administrative Bulletin as **ARC 8694B**. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

These amendments shall become effective on October 27, 2010.

These amendments are intended to implement Iowa Code chapter 89.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 80 to 85, 90] is being omitted. These amendments are identical to those published under Notice as **ARC 8694B**, IAB 4/21/10.

[Filed 8/24/10, effective 10/27/10]

[Published 9/22/10]

[For replacement pages for IAC, see IAC Supplement 9/22/10.]

## ARC 9088B

### MEDICINE BOARD[653]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76 and chapters 148 and 272C, the Board of Medicine hereby amends Chapter 13, "Standards of Practice and Principles of Medical Ethics," and Chapter 23, "Grounds for Discipline," Iowa Administrative Code.

Rule 653—13.8(148,272C) establishes the standards of practice for a physician or surgeon or osteopathic physician or surgeon who serves as a medical director at a medical spa. Subrules 23.1(43) and 23.1(44) establish as grounds for discipline improper delegation and supervision with regard to rule 653—13.8(148,272C).

The Board approved the proposed amendments during a regularly scheduled meeting on June 11, 2010.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 30, 2010, as **ARC 8925B**. A public hearing was held on July 20, 2010, and comments were submitted by the Iowa Medical Society, the Iowa Nurses Association, the Iowa Board of Nursing, the Iowa Physician Assistant Society, the American Society for Dermatologic Surgery Association, Whitefield and Eddy, P.L.C., and Theresa Hegmann, licensed physician assistant.

On August 20, 2010, the Board adopted the amendments with slight revisions based on comments received. The changes are as follows:

- Under 13.8(1), definitions were added for "alter," "capable of," "damage," and "nonsuperficial."
- Under 13.8(5)"c," the phrase "or other qualified licensed physician" was added.
- Under 13.8(5)"j," the phrase "medical director or other qualified licensed physician and all" was added.
- Under 13.8(5)"k," the sentence was revised to read, "Ensure that the identity and licensure and certification of the medical director, other qualified licensed physicians and all licensed or certified nonphysician persons are visibly displayed at each medical spa and provided in writing to each patient receiving medical aesthetic services at a medical spa."

- Under 13.8(7), a reference to 645—Chapter 326 was added.

These amendments are intended to implement Iowa Code chapter 148.

The amendments will become effective October 27, 2010.

The following amendments are adopted.

ITEM 1. Adopt the following **new** rule 653—13.8(148,272C):

**653—13.8(148,272C) Standards of practice—medical directors at medical spas—delegation and supervision of medical aesthetic services performed by qualified licensed or certified nonphysician**

## MEDICINE BOARD[653](cont'd)

**persons.** This rule establishes standards of practice for a physician or surgeon or osteopathic physician or surgeon who serves as a medical director at a medical spa.

**13.8(1) Definitions.** As used in this rule:

“*Alter*” means to change the cellular structure of living tissue.

“*Capable of*” means any means, method, device or instrument which, if used as intended or otherwise to its greatest strength, has the potential to alter or damage living tissue below the superficial epidermal cells.

“*Damage*” means to cause a harmful change in the cellular structure of living tissue.

“*Delegate*” means to entrust or transfer the performance of a medical aesthetic service to qualified licensed or certified nonphysician persons.

“*Medical aesthetic service*” means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities of the skin, hair, nails and mucous membranes by any means, methods, devices, or instruments including the use of a biological or synthetic material, chemical application, mechanical device, or displaced energy form of any kind if it alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells, with the exception of hair removal. Medical aesthetic service includes, but is not limited to, the following services: ablative laser therapy; vaporizing laser therapy; nonsuperficial light device therapy; injectables; tissue alteration services; nonsuperficial light-emitting diode therapy; nonsuperficial intense pulse light therapy; nonsuperficial radiofrequency therapy; nonsuperficial ultrasonic therapy; nonsuperficial exfoliation; nonsuperficial microdermabrasion; nonsuperficial dermaplane exfoliation; nonsuperficial lymphatic drainage; botox injections; collagen injections; and tattoo removal.

“*Medical director*” means a physician who assumes the role of, or holds oneself out as, medical director or a physician who serves as a medical advisor for a medical spa. The medical director is responsible for implementing policies and procedures to ensure quality patient care and for the delegation and supervision of medical aesthetic services to qualified licensed or certified nonphysician persons.

“*Medical spa*” means any entity, however organized, which is advertised, announced, established, or maintained for the purpose of providing medical aesthetic services. Medical spa shall not include a dermatology practice which is wholly owned and controlled by one or more Iowa-licensed physicians if at least one of the owners is actively practicing at each location.

“*Nonsuperficial*” means that the therapy alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells.

“*Qualified licensed or certified nonphysician person*” means any person who is not licensed to practice medicine and surgery or osteopathic medicine and surgery but who is licensed or certified by another licensing board in Iowa and qualified to perform medical aesthetic services under the supervision of a qualified physician.

“*Supervision*” means the oversight of qualified licensed or certified nonphysician persons who perform medical aesthetic services delegated by a medical director.

**13.8(2) Practice of medicine.** The performance of medical aesthetic services is the practice of medicine. A medical aesthetic service shall only be performed by qualified licensed or certified nonphysician persons if the service has been delegated by the medical director who is responsible for supervision of the services performed. A medical director shall not delegate medical aesthetic services to nonphysician persons who are not appropriately licensed or certified in Iowa.

**13.8(3) Medical director.** A physician who serves as medical director at a medical spa shall:

a. Hold an active unrestricted Iowa medical license to supervise each delegated medical aesthetic service;

b. Possess the appropriate education, training, experience and competence to safely supervise each delegated medical aesthetic service;

c. Retain responsibility for the supervision of each medical aesthetic service performed by qualified licensed or certified nonphysician persons;

d. Ensure that advertising activities do not include false, misleading, or deceptive representations; and

## MEDICINE BOARD[653](cont'd)

*e.* Be clearly identified as the medical director in all advertising activities, Internet Web sites and signage related to the medical spa.

**13.8(4) Delegated medical aesthetic service.** When a medical director delegates a medical aesthetic service to qualified licensed or certified nonphysician persons, the service shall be:

- a.* Within the medical director's scope of practice and medical competence to supervise;
- b.* Of the type that a reasonable and prudent physician would conclude is within the scope of sound medical judgment to delegate; and
- c.* A routine and technical service, the performance of which does not require the skill of a licensed physician.

**13.8(5) Supervision.** A medical director who delegates performance of a medical aesthetic service to qualified licensed or certified nonphysician persons is responsible for providing appropriate supervision. The medical director shall:

- a.* Ensure that all licensed or certified nonphysician persons are qualified and competent to safely perform each medical aesthetic service by personally assessing the person's education, training, experience and ability;
- b.* Ensure that a qualified licensed or certified nonphysician person does not perform any medical aesthetic services which are beyond the scope of that person's license or certification unless the person is supervised by a qualified supervising physician;
- c.* Ensure that all qualified licensed or certified nonphysician persons receive direct, in-person, on-site supervision from the medical director or other qualified licensed physician at least four hours each week and that the regular supervision is documented;
- d.* Provide on-site review of medical aesthetic services performed by qualified licensed or certified nonphysician persons each week and review at least 10 percent of patient charts for medical aesthetic services performed by qualified licensed or certified nonphysician persons;
- e.* Be physically located, at all times, within 60 miles of the location where qualified licensed or certified nonphysician persons perform medical aesthetic services;
- f.* Be available, in person or electronically, at all times, to consult with qualified licensed or certified nonphysician persons who perform medical aesthetic services, particularly in case of injury or an emergency;
- g.* Assess the legitimacy and safety of all equipment or other technologies being used by qualified licensed or certified nonphysician persons who perform medical aesthetic services;
- h.* Develop and implement protocols for responding to emergencies or other injuries suffered by persons receiving medical aesthetic services performed by qualified licensed or certified nonphysician persons;
- i.* Ensure that all qualified licensed or certified nonphysician persons maintain accurate and timely medical records for the medical aesthetic services they perform;
- j.* Ensure that each patient provides appropriate informed consent for medical aesthetic services performed by the medical director or other qualified licensed physician and all qualified licensed or certified nonphysician persons and that such informed consent is timely documented in the patient's medical record;
- k.* Ensure that the identity and licensure and certification of the medical director, other qualified licensed physicians and all licensed or certified nonphysician persons are visibly displayed at each medical spa and provided in writing to each patient receiving medical aesthetic services at a medical spa; and
- l.* Ensure that the board receives written verification of the education and training of all qualified licensed or certified nonphysician persons who perform medical aesthetic services at a medical spa, within 14 days of a request by the board.

**13.8(6) Exceptions.** This rule is not intended to apply to physicians who serve as medical directors of licensed medical facilities, clinics or practices that provide medical aesthetic services as part of or incident to their other medical services.

**13.8(7) Physician assistants.** Nothing in these rules shall be interpreted to contradict or supersede the rules established in 645—Chapters 326 and 327.

MEDICINE BOARD[653](cont'd)

ITEM 2. Adopt the following **new** subrules 23.1(43) and 23.1(44):

**23.1(43)** Violation of the standards of practice for medical directors who delegate and supervise medical aesthetic services performed by nonphysician persons at a medical spa as set out at rule 653—13.8(148,272C).

**23.1(44)** Failure to provide the board, within 14 days of a request by the board as set out at 653—paragraph 13.8(5)“l,” written verification of the education and training of all nonphysician persons who perform medical aesthetic services at a medical spa.

[Filed 8/25/10, effective 10/27/10]

[Published 9/22/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/22/10.

**ARC 9103B**

## **REVENUE DEPARTMENT[701]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Chapter 38, “Administration,” Chapter 40, “Determination of Net Income,” Chapter 43, “Assessments and Refunds,” Chapter 44, “Penalty and Interest,” Chapter 53, “Determination of Net Income,” and Chapter 59, “Determination of Net Income,” Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXIII, No. 2, p. 87, on July 28, 2010, as **ARC 8944B**.

Item 1 adopts new rule 701—10.5(421), which was previously rescinded, to provide for penalties for improper receipt of a refund or credit.

Item 2 amends subrule 38.17(3) to provide for changes in the taxation of spouses of military personnel in accordance with the Military Spouses Residency Relief Act, Public Law No. 111-97.

Item 3 amends rule 701—40.1(422) to reference new rule 701—40.75(422).

Item 4 amends subrule 40.16(5) to correct an example regarding the reporting of income for Iowa individual income tax from intangible personal property for nonresidents of Iowa.

Item 5 amends rule 701—40.65(422) to provide that the increase in the expensing allowance under Section 179 of the Internal Revenue Code is not allowed for Iowa individual income tax purposes for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010.

Item 6 adopts new rule 701—40.75(422) related to the exclusion of certain income received from the Iowa veterans trust fund from Iowa individual income tax.

Item 7 amends the implementation clause for rule 701—43.4(68A,422,456A).

Item 8 adopts new rule 701—44.5(422) to provide for the waiver of penalty and interest related to additional tax associated with amended returns for Iowa individual income tax for certain casualty losses for the 2008 tax year.

Items 9 and 10 amend paragraph 53.15(1)“a” and subparagraph 53.15(3)“c”(2) to remove obsolete provisions regarding consolidated Iowa corporation income tax returns that relate to tax periods beginning prior to July 1, 1992.

Item 11 amends rule 701—53.23(422) to provide that the increase in the expensing allowance under Section 179 of the Internal Revenue Code is not allowed for Iowa corporation income tax purposes for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010. This is similar to the change in Item 5.

Item 12 amends rule 701—59.24(422) to provide that the increase in the expensing allowance under Section 179 of the Internal Revenue Code is not allowed for Iowa franchise tax purposes for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010. This is similar to the change in Item 5.

These amendments are identical to those published under Notice of Intended Action.

## REVENUE DEPARTMENT[701](cont'd)

These amendments will become effective October 27, 2010, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code section 421.27 as amended by 2010 Iowa Acts, House File 2531, section 124; 2010 Iowa Acts, House File 2531, sections 159 and 160; and 2009 Iowa Code Supplement section 422.7 as amended by 2010 Iowa Acts, House File 2532.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 10, 38, 40, 43, 44, 53, 59] is being omitted. These amendments are identical to those published under Notice as **ARC 8944B**, IAB 7/28/10.

[Filed 9/1/10, effective 10/27/10]

[Published 9/22/10]

[For replacement pages for IAC, see IAC Supplement 9/22/10.]

**ARC 9104B****REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 38, "Administration," Chapter 42, "Adjustments to Computed Tax and Tax Credits," Chapter 51, "Administration," Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Chapter 57, "Administration," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXIII, No. 2, p. 92, on July 28, 2010, as **ARC 8954B**.

Item 1 amends subrule 38.3(2) to provide that individuals should retain any records related to Iowa tax credits claimed on Iowa individual income tax returns.

Item 2 amends paragraph 42.11(3)"e" to add a cross reference to new subrule 52.7(6).

Item 3 amends subrule 42.14(2) for individual income tax to provide that the election to receive a refund of unused investment tax credit is no longer available for businesses eligible under the new jobs and income program and the enterprise zone program.

Item 4 amends the implementation clause for rule 701—42.14(15).

Item 5 amends paragraph 42.19(2)"a" for individual income tax to provide that \$45 million of historic preservation and cultural and entertainment district tax credits is available starting with the fiscal year beginning July 1, 2012.

Item 6 amends the implementation clause for rule 701—42.19(404A,422).

Item 7 amends subrule 42.22(2) for individual income tax to provide that the investment tax credit for equity investments in a venture capital fund is no longer available for investments made after July 1, 2010.

Item 8 amends the implementation clause for rule 701—42.22(15E,422).

Item 9 amends paragraph 42.23(2)"c" for individual income tax to provide that the election to receive a refund of unused investment tax credit is no longer available for businesses eligible under the new capital investment program.

Item 10 amends the implementation clause for rule 701—42.23(15).

Item 11 amends rule 701—42.24(15E,422) for individual income tax to provide that the amount of endow Iowa tax credits available starting with the 2010 calendar year is \$2.7 million plus a percentage of gaming revenues.

Item 12 amends the implementation clause for rule 701—42.24(15E,422).

Item 13 amends paragraph 42.29(2)"b" for individual income tax to provide that the election to receive a refund of unused investment tax credit is no longer available for businesses eligible under the high quality jobs creation program.

## REVENUE DEPARTMENT[701](cont'd)

Item 14 amends rule 701—42.30(15E,422) for individual income tax to provide that the economic development region revolving fund tax credit is repealed for tax years beginning on or after January 1, 2010.

Item 15 amends the implementation clause for rule 701—42.30(15E,422).

Item 16 amends subrule 42.42(1) for individual income tax to reference new subrule 52.7(6) relating to changes in the calculation of the research activities credit for eligible businesses approved under the high quality jobs program.

Item 17 amends rule 701—42.45(15) for individual income tax to provide for the new aggregate tax credit limit for certain economic development programs for fiscal years beginning on or after July 1, 2010.

Item 18 amends subrule 51.3(2) to provide that corporations should retain any records related to Iowa tax credits claimed on Iowa corporation income tax returns. This is similar to the change in Item 1.

Item 19 amends subrule 52.7(5) for corporation income tax to provide that the calculation of the research activities credit for businesses eligible under the enterprise zone program has been changed for awards made by the Iowa Department of Economic Development on or after July 1, 2010.

Item 20 rennumbers subrule 52.7(6) as 52.7(7), and Item 21 adopts new subrule 52.7(6) for corporation income tax to provide for the new calculation of the research activities credit for businesses eligible under the enterprise zone program for awards made by the Iowa Department of Economic Development on or after July 1, 2010.

Item 22 amends subrule 52.10(4) for corporation income tax to provide that the election to receive a refund of unused investment tax credit is no longer available for businesses eligible under the new jobs and income program. This is similar to the change in Item 3.

Item 23 amends the implementation clause for rule 701—52.10(15).

Item 24 amends rule 701—52.12(422) to update the sequence of tax credits for corporation income tax to include the disaster recovery housing project tax credit.

Item 25 amends subrule 52.14(3) for corporation income tax to reference new subrule 52.7(6) relating to changes in the calculation of the research activities credit for businesses eligible under the enterprise zone program.

Item 26 amends paragraph 52.18(2)“a” for corporation income tax to provide that \$45 million of historic preservation and cultural and entertainment district tax credits is available starting with the fiscal year beginning July 1, 2012. This is similar to the change in Item 5.

Item 27 amends the implementation clause for rule 701—52.18(422).

Item 28 amends subrule 52.21(2) for corporation income tax to provide that the investment tax credit for equity investments in a venture capital fund is no longer available for investments made after July 1, 2010. This is similar to the change in Item 7.

Item 29 amends the implementation clause for rule 701—52.21(15E,422).

Item 30 amends paragraph 52.22(2)“c” for corporation income tax to provide that the election to receive a refund of unused investment tax credit is no longer available for businesses eligible under the new capital investment program. This is similar to the change in Item 9.

Item 31 amends the implementation clause for rule 701—52.22(15).

Item 32 amends rule 701—52.23(15E) for corporation income tax to provide that the amount of endow Iowa tax credits available starting with the 2010 calendar year is \$2.7 million plus a percentage of gaming revenues. This is similar to the change in Item 11.

Item 33 amends the implementation clause for rule 701—52.23(15E).

Item 34 amends paragraph 52.28(2)“b” for corporation income tax to provide that the election to receive a refund of unused investment tax credit is no longer available for businesses eligible under the high quality jobs creation program. This is similar to the change in Item 13.

Item 35 amends rule 701—52.29(15E,422) for corporation income tax to provide that the economic development region revolving fund tax credit is repealed for tax years beginning on or after January 1, 2010. This is similar to the change in Item 14.

Item 36 amends the implementation clause for rule 701—52.29(15E,422).

## REVENUE DEPARTMENT[701](cont'd)

Item 37 amends subrule 52.40(1) for corporation income tax to reference new subrule 52.7(6) relating to changes in the calculation of the research activities credit for eligible businesses approved under the high quality jobs program. This is similar to the change in Item 16.

Item 38 amends rule 701—52.41(15) for corporation income tax to provide for the new aggregate tax credit limit for certain economic development programs for fiscal years beginning on or after July 1, 2010. This is similar to the change in Item 17.

Item 39 amends subrule 52.42(2) to correct an error regarding the disaster recovery housing project tax credit for corporation income tax.

Item 40 amends subrule 57.3(2) to provide that financial institutions should retain any records related to Iowa tax credits claimed on Iowa franchise tax returns. This is similar to the change in Items 1 and 18.

Item 41 amends subrule 58.11(2) for franchise tax to provide that the investment tax credit for equity investments in a venture capital fund is no longer available for investments made after July 1, 2010. This is similar to the change in Items 7 and 28.

Item 42 amends the implementation clause for rule 701—58.11(15E,422).

Item 43 amends rule 701—58.13(15E) for franchise tax to provide that the amount of endow Iowa tax credits available starting with the 2010 calendar year is \$2.7 million plus a percentage of gaming revenues. This is similar to the change in Items 11 and 32.

Item 44 amends the implementation clause for rule 701—58.13(15E).

Item 45 amends rule 701—58.18(15E,422) for franchise tax to provide that the economic development region revolving fund tax credit is repealed for tax years beginning on or after January 1, 2010. This is similar to the change in Items 14 and 35.

Item 46 amends the implementation clause for rule 701—58.18(15E,422).

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective October 27, 2010, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 15.119, 15.333, 15.335, 15E.51, 15E.232, 15E.305, 404A.4, 422.11G, 422.11K, 422.33 and 422.60 as amended by 2010 Iowa Acts, Senate File 2380.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 38, 42, 51, 52, 57, 58] is being omitted. These amendments are identical to those published under Notice as **ARC 8954B**, IAB 7/28/10.

[Filed 9/1/10, effective 10/27/10]

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[For replacement pages for IAC, see IAC Supplement 9/22/10.]

**ARC 9100B**

**TREASURER OF STATE[781]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 12.21, the Treasurer of State hereby rescinds Chapter 8, "Accepting Credit Card Payments," Iowa Administrative Code, and adopts new Chapter 8 with the same title.

The rules in Chapter 8 provide for the administration and operation of credit card receipt processing for state departments. This amendment reflects changes in credit card processing regulations by merchant services providers and credit card associations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 28, 2010, as **ARC 8952B**. A public hearing was held on these rules on August 17, 2010. No one attended the public hearing, and no written comments were received. These rules are identical to those published under Notice of Intended Action.

TREASURER OF STATE[781](cont'd)

The Treasurer of State adopted these rules on September 1, 2010.  
These rules are intended to implement Iowa Code section 12.21.  
These rules will become effective October 27, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 8] is being omitted. These rules are identical to those published under Notice as **ARC 8952B**, IAB 7/28/10.

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[For replacement pages for IAC, see IAC Supplement 9/22/10.]

## **ARC 9101B**

### **UTILITIES DIVISION[199]**

#### **Adopted and Filed**

Pursuant to Iowa Code sections 17A.4, 476.1, 476.1A, 476.1B, and 476.20, and 2010 Iowa Acts, Senate File 2297, the Utilities Board (Board) gives notice that on September 1, 2010, the Board issued an order in Docket No. RMU-2010-0001, In re: Disconnection of Residence with a Deployed Service Member, "Order Adopting Rules." The Board is adopting amendments to 199 IAC 19.4(476) and 20.4(476). The amendments reflect changes to Iowa Code section 476.20(3) contained in 2010 Iowa Acts, Senate File 2297, which was signed by the Governor on April 27, 2010, and became effective on July 1, 2010.

2010 Iowa Acts, Senate File 2297, addressed various veterans and military service issues, among which was a provision amending Iowa Code section 476.20, which deals with disconnection of utility service. 2010 Iowa Acts, Senate File 2297, amends Iowa Code subsection 476.20(3) by adding the following unnumbered paragraph:

The rules established by the board shall provide that a public utility furnishing gas or electricity shall not disconnect service to a residence in which one of the heads of household is a service member deployed for military service, as defined in section 29A.90, prior to a date ninety days after the end of the service member's deployment, if the public utility is informed of the deployment.

The amendments to 199 IAC 19.4(476) and 20.4(476) reflect these statutory changes, prohibiting disconnection in circumstances outlined by the statute and amending the customer rights and remedies descriptions in Chapters 19 and 20.

Notice of Intended Action in Docket No. RMU-2010-0001 was published in IAB Vol. XXXII, No. 26 (6/16/2010) p. 2849, as **ARC 8858B**. Written comments were received from the Consumer Advocate Division of the Department of Justice, MidAmerican Energy Company, Interstate Power and Light Company (IPL), Black Hills/Iowa Gas Utility d/b/a Black Hills Energy, and the Iowa Association of Electric Cooperatives. An oral presentation was held on July 27, 2010, and IPL submitted supplemental information subsequent to the oral presentation.

The Board notes that 2010 Iowa Acts, Senate File 2297, only addresses disconnection of gas or electric service; there is no forgiveness of the public utility's charges, and the customer's liability for the account is unaffected. This is consistent with the long-standing winter disconnection moratorium of Iowa Code section 476.20, which also prohibits disconnection of service in certain situations but does not require forgiveness of the public utility's charges.

The comments were generally supportive of the Noticed rules. Although some commenters said there was an ambiguity as to whether the statute applied to both federal and state deployments, the Board will apply the rules to both types of deployments because this is consistent with legislative intent. Parties at the oral presentation were in general agreement that the rules should cover both state and federal deployments.

## UTILITIES DIVISION[199](cont'd)

The amendments change the rights and responsibilities statement sent to utility customers. In the past when such changes have been made, the Board has been flexible about allowing the existing stock of statements to be used before requiring use of a new form reflecting changes; utilities have been allowed to provide the new language by using either a bill message or bill insert. However, because of the Board's change of address that will occur this year, utilities will need to have updated notices ready before January 2011 that include the language required by the adopted amendments and the Board's new address, telephone numbers, and E-mail addresses. If there are any questions, the utilities should work with the Board's Customer Service staff.

Although the utility commenters requested that notice of a deployment be in writing, preferably by a copy of the deployed member's orders, the Board will not require the notice to be in writing because there may be situations where it is impractical to provide written notice. Written notice, however, is preferred whenever possible.

The Board will not adopt suggestions to further define the term "head of household." This is a difficult term to define other than in general terms, and refinements are best left to a case-by-case determination. Also, in response to another suggestion, the Board will not add language to the rights and remedies encouraging people to continue paying at least part of their bill. The Board believes the notice is clear that, although disconnection is prohibited during the term of the deployment and within 90 days thereafter, there is no forgiveness of the amount of the bill and the customer remains responsible for payment.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA,HF2206) is applicable to these amendments. Also, because there were no changes to the Noticed amendments, no additional notice is necessary prior to adopting these amendments.

These amendments are intended to implement Iowa Code sections 476.1, 476.1A and 476.1B and section 476.20 as amended by 2010 Iowa Acts, Senate File 2297.

These amendments will become effective on October 27, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [19.4, 20.4] is being omitted. These amendments are identical to those published under Notice as **ARC 8858B**, IAB 6/16/10.

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